LAW ASSOCIATION
—OF—
PHILADELPHIA

(15,321.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 937.

DAVID L. HAMMOND, EDWARD C. SMITH, CHARLES L. HAMMOND, ET AL., PLAINTIFFS IN ERROR,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Certified copy of citation	*a*	1
Citation	1	2
Writ of error	2	2
Assignment of errors	3	4
Transcript from circuit court of St. Louis	6	5
Petition	6	6
Sheriff's return	7	6
Bond for costs	7	7
Release of part of property	8	7
Conn. Mut. Life Ins. Co. made party defendant	8	7
Time granted to file amended answer	8	8
Amended answer filed	9	8
Amended answer	9	8
Reply to amended answer	20	15
Motion to strike out parts of amended answer sustained	23	16
Amended answer with parts stricken out	23	17
Bill of exceptions filed	28	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 18, 1893.

	Original.	Print.
Bill of exceptions	28	20
Motion to strike out parts of amended answer	29	20
Judge's certificate	31	21
Dismissal as to L. D. Dameron	31	21
Motion that E. C. Smith to be made party plaintiff	31	22
Death of Morrison suggested	32	22
E. C. Smith made party plaintiff	32	22
Cause revived in name of heirs of J. L. D. Morrison	33	23
Scire facias	34	24
Sheriff's return	35	24
Appearance of A. L. Morrison *et al*	36	25
Proof of publication filed	36	25
Advertisement	37	26
Cause dismissed as to certain parties	39	27
Judgment	39	27
Motion for new trial filed	40	28
Motion for new trial overruled	41	28
Time to file bill of exceptions	41	28
Affidavit for appeal	42	29
Bill of exceptions filed	42	29
Stipulation as to transcript on appeal, &c	43	29
Bill of exceptions	45	31
Testimony before board of commissioners	46	31
Deed from Jos. Hunot to J. Vandenbenden	47	32
Deed from J. Vandenbenden to Rufus Easton	50	34
New Madrid certificate 161	54	36
Opinion of recorder of land titles	57	38
Application of Joseph Easton for location	58	39
Diagram of survey No. 2500	59	39
Survey 2500, certificate 161	61	40
Deed from R. Easton to S. Hammond	63	41
Deposition of Andrew J. Hammond	66	43
Jos. S. McKie	70	46
James H. Washington	71	46
Susan Briquet	72	47
Claudius Briquet	74	49
Augusta G. Barsh	75	50
William F. Barsh	77	51
Mary A. Kingman	78	51
Samuel E. Hammond	80	53
Deed from C. Briquet and wife to E. C. Smith	86	57
Deed from E. C. Smith to J. L. D. Morrison	88	59
Deed from William F. Barsh and wife to Morrison	89	60
Deed from T. M. Price and wife to Morrison	90	62
Deed from David Hammond to James L. D. Morrison	91	63
Deed from Mary A. Washington to J. L. D. Morrison	92	65
Deed from Kingman *et al.* to Morrison	93	66
Deed from Sarah J. Hammond to J. L. D. Morrison	95	68
Deed from C. L. Hammond and wife to Morrison	96	70
Deed from S. E. Hammond to J. L. D. Morrison	97	71
Quitclaim deed from S. Hammond and wife to Morrison and Smith	98	73
Deed from S. G. Hammond to E. C. Smith	101	74

	Original.	Print.
Quitclaim deed from Morrison and wife to E. C. Smith	103	76
Quitclaim deed from Morrison and wife to E. C. Smith	106	77
Deed from Morrison and wife to E. C. Smith	110	80
Deed from Morrison and wife to E. C. Smith	114	82
Deed from Morrison and wife to E. C. Smith	117	84
Deed from Morrison and wife to E. C. Smith	119	85
Deed from Morrison and wife to D. T. Jewett	122	86
Deed from R. Easton to S. Hammond	125	88
Deed from S. Hammond, by sheriff, to Relf and Chew	128	90
Acknowledgment of sheriff's deed	131	94
Record of judgment, &c., Relf and Chew *vs.* Hammond	132	95
Bond	133	96
Scire facias	134	96
Sheriff's return	135	97
Alias scire facias	135	97
Sheriff's return	137	98
Transcript of the record in Relf and Chew *vs.* Hammond	137	98
Assignment of errors in the supreme court	145	104
Execution	148	107
Clerk's endorsement	148	107
Sheriff's return	148	108
Sheriff's advertisement	149	108
Power of attorney from Relf and Chew to J. O'Fallon	151	109
Deed from Relf *et al.*, by attorney, to P. Lindell	154	111
Deed from Hunot and wife to P. Lindell	156	113
Deed from public schools to P. Lindell	157	114
Deposition of Robert Baker	162	116
Dismissed as to certain parties	174	125
Deed from L. D. Dameron to William M. Dameron	175	125
Trust deed from William M. Dameron to Conn. Mut'l Life Ins. Co	181	129
Release of above deed of trust	191	134
Deed from W. M. Dameron and wife to Conn. Mut'l Life Ins. Co	192	135
Tax deed from L. D. Dameron to H. Smith	198	138
Tax deed, L. D. Dameron, by collector, to H. Smith	203	141
Deed from H. Smith and wife to Conn. Mut'l Life Ins. Co.	206	143
Tax deed, State of Missouri, by collector, to H. Smith	209	144
Deed from H. Smith and wife to Conn. Mut'l Life Ins. Co	213	146
Deed from R. B. Wade and wife to Conn. Mut'l Life Ins. Co.	215	147
Deed of trust, L. D. Dameron to Conn. Mut'l Life Ins. Co.	218	149
Satisfaction of above deed of trust	223	152
Deed, R. Easton and wife to William Stokes	225	152
Private surveys, T. 45, R. 7 E	226	154
Relinquishment to U. S. by R. Easton Nov. 1st, 1816	229	155
Claims and conf. private land claims Nos. 464, 349, 37, and 161	233	161
Report on N. M. certificate 161	238	164
List of patent certificates	242	168
Letter from Sur. Gen. Loughborough	247	171
Survey No. 2500	249	174
Patent certificate No. 492	254	179
Certificate 492, issued February 18, 1859	257	180

	Original.	Print.
Patent to Joseph Hunot	258	181
Letters from J. D. Wilson, act'g Com. Gen. Land Office	268	187
Letter from S. A. Smith, commissioner	272	189
Copy of patent to McCullough's heirs	272	189
Testimony of W. H. Cozens	273	191
Stipulation as to evidence	294	204
Testimony of Sullivan Blood	296	205
L. H. Baker	300	211
John F. Darby	323	225
Deposition of Richard Dowling	327	232
Whittelsey's protest	354	251
Letter from Joseph S. Wilson	356	253
Letter from Joseph S. Wilson to A. Renard	357	254
Opinion of Secretary of Interior	358	255
Letter from J. S. Wilson to A. Renard	360	258
Instructions to Cozens May 9, 1846	363	259
Map	368	264
Plaintiff's instructions given	370	265
Plaintiff's instructions refused	373	267
Defendant's instructions given	383	272
Motion for new trial	386	274
Affidavit for appeal	388	275
Judge's certificate to bill of exceptions	389	275
Clerk's certificate	389	276
Motion to argue causes together	390	276
Motion to continue	393	278
Suggestion in opposition to motion to continue	396	280
Continued until further order of court	399	281
Motion to set cause for hearing	399	282
Opinion of supreme court United States in Hammond *vs.* Johnston	401	282
Cause set for hearing	406	286
Cause argued and submitted	407	286
Judgment	407	286
Opinion of the court	408	287
Motions for rehearing and to transfer cause to court in banc filed	423	295
Motion to transfer to court in banc	423	296
Motion for rehearing	425	296
Motion for rehearing and to transfer to court in banc denied	433	300
Order allowing writ of error, &c	433	301
Bond	434	301
Order extending time for making transcript	437	303
Application for extension of time for making transcript of record	437	303
Certificate of clerk	438	303
Stipulation not to print record in case of Hammond *et al. vs.* Gordon, and that that case be tried on the record in this case	439	304

a The United States of America to the Connecticut Mutual Life Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the 13th day of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein David L. Hammond, Edward C. Smith, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, Julia S. McKie, and James B. McKie, her husband; Julia A. S. Morrison, Joseph F. Carr and Mary Eliza Carr, his wife; Albert T. Kelley and Adele L. M. Kelley, his wife; Clark M. Carr and Virginia A. Carr, his wife; William F. Barsh and Augusta G. Barsh, his wife; Thomas M. Price and Catharine W. Price, his wife; Joseph L. McKie and Annie W. McKie, his wife; Lulu McC. Kingman, Carrie Kingman, Laura Virginia Webb and Alexander Webb, her husband, and Martha J. Kingman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas A. Sherwood, chief justice of the supreme court of the State of Missouri, this 15th day of [SEAL.] December, in the year of our Lord one thousand eight hundred and ninety-two.

T. A. SHERWOOD,
Chief Justice.

STATE OF MISSOURI, *ss:*

We hereby acknowledge the receipt of a copy of the within citation this 16th day of December, A. D. 1892.

J. B. HENDERSON,
JAS. M. LEWIS,
Att'ys for Defendant.

b STATE OF MISSOURI, *sct:*

I, John R. Green, clerk of the supreme court of the State of Missouri, certify that the above and foregoing is a true copy of the citation in the case of David L. Hammond *et al. vs.* The Connecticut Mutual Life Insurance Company, issued on the 15th day of December, 1892, as fully as the same remains on file in my office.

Seal of the Supreme Court of Missouri.

Witness my hand and the seal of said court. Done at the city of Jefferson this 15th day of December, 1892.

JNO. R. GREEN, *Clerk.*

c [Endorsed:] No. 5566. D. L. Hammond & *al.*, pl'ffs in error, *vs.* Connecticut Mutual Life Ins. Co. Citation. Served on def't's att'ys. Filed Dec. 17, 1892. Jno. R. Green, clerk.

1 The United States of America to the Connecticut Mutual Life Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the 13th day of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein David L. Hammond, Edward C. Smith, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, Julia S. McKie and James B. McKie, her husband; Julia A. S. Morrison, Joseph F. Carr and Mary Eliza Carr, his wife; Albert T. Kelley and Adele L. M. Kelley, his wife; Clark M. Carr and Virginia A. Carr, his wife; William F. Barsh and Augusta G. Barsh, his wife; Thomas M. Price and Catharine W. Price, his wife; Joseph L. McKie and Annie W. McKie, his wife; Lulu McC. Kingman, Carrie Kingman, Laura Virginia Webb and Alexander Webb, her husband, and Martha J. Kingman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal of the Supreme Court of Missouri.

Witness the Honorable Thomas A. Sherwood, chief justice of the supreme court of the State of Missouri, this 15th day of December, in the year of our Lord one thousand eight hundred and ninety-two.

T. A. SHERWOOD,
Chief Justice.

[Endorsed:] Supreme court of Missouri. David L. Hammond *et al.*, plaintiffs in error, *vs.* Connecticut Mutual Life Insurance Company, defendants in error. Citation. Filed December 15th, 1892. Jno. R. Green, clerk.

STATE OF MISSOURI, *ss:*

— hereby acknowledge due service of the within citation this — day of ——, A. D. 187–.

——— ———,
Attorney for Defendant in Error.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court before you, at the October term, 1892, thereof, between David L. Hammond, Edward C. Smith, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, Julia S. McKie and James B. McKie, her husband; Julia A. S. Morrison, Joseph F. Carr and Mary Eliza Carr, his wife; Albert T. Kelley and Adele L. M. Kelley, his wife; Clark M. Carr and Virginia A. Carr, his wife; William F. Barsh and Au-

gusta G. Barsh, his wife; Thomas M. Price and Catharine W. Price, his wife; Joseph L. McKie and Annie W. McKie, his wife; Lulu McC. Kingman, Carrie Kingman, Laura Virginia Webb and Alexander Webb, her husband; Martha J. Kingman, plaintiffs in error, and Connecticut Mutual Life Insurance Company, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 13th day of January next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of December, in the year of our Lord one thousand eight hundred and ninety-two.

Seal of the United States Circuit Court for the Western District of Missouri, Central Division.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
T. A. SHERWOOD,
Chief Justice.

[Endorsed:] No. 5566. United States circuit court, western district of Missouri, central division. David L. Hammond *et al.*, plaintiffs in error, *vs.* Connecticut Mutual Life Insurance Company, defendant in error. Writ of error to the supreme court of the State of Missouri. Returned and filed — day of ——, 187–. ——, clerk.

Return to Writ.

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Seal of the Supreme Court of Missouri.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court of Missouri, at the city of Jefferson, this 10th day of April, A. D. 1893.

JNO. R. GREEN, *Clerk.*

The time for making the within record is hereby extended until March 13, 1893.

T. A. SHERWOOD,
Chief Justice.

Time extended to May 13, 1893. (See page 437.)

3 In the Supreme Court of the State of Missouri, October Term, 1892.

DAVID L. HAMMOND *et al.*, Plaintiff- in Error,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant in Error.

To the clerk of the circuit court of the United States in and for the central division of the western district of Missouri:

The undersigned, attorneys for the plaintiffs in said case, respectfully represent that in the above-entitled cause, wherein the said supreme court of the State of Missouri gave judgment for the aforesaid defendants, the said court committed errors in this:

1st. That said court erroneously held and decided that there was, on the facts appearing in the record as to the location of New Madrid certificate No. 161, under and by virtue of the act of Congress passed February 17th, 1815, known as the New Madrid act (under which location said plaintiffs claim title to said land), an equitable title to said land in one Easton immediately upon his application to the surveyor general of Missouri to have said certificate No. 161 located upon said land and before the same was surveyed, such title as said Easton could lawfully sell to or give a bond to sell said land to one Samuel Hammond (under whom plaintiffs claim), and make a title in said Hammond which he could "lawfully
4 sell" and give title to the purchaser, or which could be lawfully sold on execution against said Hammond, and give title to the purchaser under the sale on execution, and that such sale would carry the title to said land, except as against the United States, to the purchaser, and would entitle such purchaser to claim said land and have title to it when the full fee-simple title should issue from the United States, and this though the bond was given about two months after the date of the application and eight or nine months before any survey of the land was made, and though said survey was not returned to the recorder till January, 1833.

2. That said court erroneously held and decided that when the United States patent to said land covered by said New Madrid certificate No. 161, and known as "United States survey 2500," was

issued in August, 1859, the same, by virtue of the "doctrine of relation," related back to the date of the application to the surveyor general for a survey of said land, to wit, June 16th, 1818, and that said application to the said surveyor general was the "inception of the title" to said land, and that as the fee-simple title related back to the date of said application any sale of said land by execution or otherwise, though made long before the said survey was returned to the recorder (which was not till January, 1833), took and held the fee-simple title thus issued in 1859.

3. That said court erroneously held and decided that, although the cases decided by the Supreme Court of the United States (construing the meaning of said New Madrid statute) do show that there is no vested right in the locator of a New Madrid cer-
5 tificate to the land which he proposes to take in exchange for the injured land as against the United States till the survey is returned to the recorder of land titles, yet, says the court in its opinion, the locator acquires a right "as between himself and those claiming under him which may be asserted and which the courts will protect"—that is, as soon as his application is made to the surveyor general.

4. That said court erroneously gave judgment in said case for the defendants, whereas judgment should have been given for the plaintiffs; wherefore plaintiffs pray that said judgment be reversed and judgment rendered for the plaintiffs, and to that end the plaintiffs pray that a writ of error out of the Supreme Court of the United States, under the seal of said court, may issue to the honorable the judges of the supreme court of the State of Missouri, commanding said court to send a duly certified copy of the records and proceedings in the case aforesaid to the Supreme Court of the United States, in Washington, D. C., so that the same may be in Washington on the 2nd Monday of October, 1893.

D. T. JEWETT &
H. H. DENISON,
Att'ys for Pl'ffs in Error.

[Endorsed:] Filed Dec. 15, 1892. Jno. R. Green, clerk.

6 STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on the 13th day of June, 1874, there was filed in the office of the clerk of the circuit court of the county (now city) of St. Louis a petition in a certain cause wherein, at said time, David L. Hammond and others were plaintiffs and Logan D. Dameron was defendant, in words and figures as follows, to wit:

Petition.

In the Circuit Court for St. Louis County, Missouri, October Term, 1874.

DAVID L. HAMMOND, SAMUEL E. HAMMOND, CHARLES S. HAMMOND, Sarah G. Hammond, Mary A. Washington, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, William F. Barsh and Agusta G. Barsh, His Wife; Thomas M. Price and Catharine V. Price, His Wife; Joseph S. McKie and Anna W. McKie, His Wife, and Minors: Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura Virginia Briquet, by Their Curator, E. H. Hesse, Plaintiffs,

vs.

LOGAN D. DAMERON, Defendant.

The plaintiffs state that on the first day of June, A. D. 1874, they were lawfully entitled to the possession of the following-described parcel of land or premises: Situated and being in the county of St. Louis, Missouri, in township forty-five (45) north, in range seven (7) east, of the fifth principal meridian, and known and described as United States survey number two thousand five hundred (2500), surveyed under New Madrid certificate number one hundred and sixty-one (161), in the name of Joseph Hunot or his legal representatives.

And, being so entitled to the possession thereof, the defend-
7 ant afterwards, on the second day of June, A. D. 1874, entered into said premises and unlawfully withholds from the plaintiffs the possession thereof, to their damage in the sum of five hundred dollars.

Plaintiffs further aver that the defendant was in the possession of the above-described premises or parcel of land at the time of the commencement of this suit, and that the monthly rents and profits of the premises occupied by defendant are fifty dollars.

Wherefore plaintiffs ask judgment against defendant for the possession of the premises and for the damages for the detention thereof and for the monthly rents and profits thereof and for costs.

D. T. JEWETT,
S. N. HOLLIDAY, *Attorneys.*
J. L. D. MORRISON, *Pro Se.*

Sheriff's Return.

Upon the filing of said petition a summons was issued for said defendant, directed to the sheriff of St. Louis county, who returned the same duly executed on the 23rd day of June, 1874.

On the 18th day of June, 1874, plaintiffs gave a bond for costs in words and figures as follows, to wit:

Bond for Costs.

I acknowledge myself bound for all costs that may accrue in the case of David L. Hammond *et al.* against Logan D. Dameron.

Witness my hand and seal, at St. Louis, this 18th day of June, 1874.

L. D. CABANNE. [SEAL.]

And afterwards, at the April term, 1881, of the circuit court, city of St. Louis, the following proceeding was had in said
8 cause, to wit:

Release of Part of Property.

FRIDAY, *May 20th*, 1881.

DAVID L. HAMMOND *et al.*
vs.
LOGAN D. DAMMERON.

Now come plaintiffs, by attorney, and dismiss this suit as to the following portion of the property claimed in the petition, to wit, fourteen undivided fifteenths, $\frac{14}{15}$, parts of lot number sixty-three (63) of Peter Lindell's second addition, lying within United States survey No. 2500, and bounded northerly by Olive street, easterly by lot sixty-four, southerly by land claimed by the Charter Oak Life Insurance Company, and westerly by Ahe avenue. Remitter filed.

And afterwards, at the February term, 1892, of said court, the following further proceeding was had in said cause, to wit:

Conn. Mut. Life Ins. Co. Made Party Def't.

WEDNESDAY, *March 15th*, 1882.

DAVID L. HAMMOND *et al.*
vs.
LOGAN D. DAMERON.

The court, having duly considered the petition of the Conn. Mut. Life Insurance Company, this day filed, praying to be made a party defendant herein, doth order that said petition be granted.

And afterwards, at the October term, 1883, of said circuit court, the following further proceeding was had in said cause, to wit:

Time Granted to File Amended Answer.

FRIDAY, *November* 16*th*, 1883.

DAVID L. HAMMOND *et al.*
vs.
LOGAN D. DAMERON *et al.*

On motion, until January 15th, 1884, is granted defendant Conn. Mutual Life Ins. Co. to file an amended answer.

And afterwards, at the December term, 1884, of said circuit court, the following further proceeding was had in said cause, to wit:

Amended Answer Filed.

THURSDAY, *January* 10*th*, 1884.

DAVID L. HAMMOND *et al.*
vs.
CONN. MUTUAL LIFE INS. CO. *et al.*

Amended answer of Conn. Mutual Life Insurance Co. filed by leave; which amended answer is in words and figures as follows, to wit:

Amended Answer.

CITY OF ST. LOUIS, *State of Missouri*, } *ss:*

In the Circuit Court of the City of St. Louis, December Term, 1883, Room 5.

DAVID L. HAMMOND, JAMES L. D. MORRISON, *et al.*, Plaintiffs,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company (a Corporation) and Logan D. Dameron, Def'ts. } Case No. 30080.

Now, at this day, comes The Connecticut Mutual Life Insurance Company (a corporation), one of the defendants in the above-entitled cause, and, the leave of court first being had and obtained, files this its separate and amended answer, and denies each and every allegation in plaintiffs' petition contained except as hereinafter specifically admitted.

For a further answer this defendant denies that it is in possession of all of United States survey No. 2500, located under New Madrid certificate No. 161, as charged in plaintiffs' petition herein, but says it is in possession of a part of said survey only, to wit, of lot No. forty-six of Peter Lindell's second (2nd) addition to the city of St. Louis, bounded on the north by Maryland avenue, on

the east by Cornelia avenue, on the south by Lindell avenue, and on the west by Taylor avenue, and this defendant says that for more than forty years prior to the 13th day of June, 1874 (the day this suit was brought), it and its grantors and those under whom it claims have been in the actual, open, notorious, uninterrupted, peaceable, exclusive, and adverse possession of said lot No. forty-six (46) of Peter Lindell's second addition to the city of St. Louis, claiming title thereto against all the world, and that the title of plaintiffs, if any they ever had, is barred by the statute of limitations and vested in this defendant by virtue of such possession.

And, further answering, this defendant says that neither the plaintiffs herein nor their ancestors, predecessors, grantors, or any other person under whom they claim were seized or possessed of said lot No. forty-six (46) of Peter Lindell's second (2nd) addition to the city of St. Louis or any part thereof within ten years next preceding the commencement of this suit; wherefore the cause of action of plaintiffs, if any they ever had, is barred by the statute of limitations in such cases made and provided.

And, further answering, this defendant states and charges the fact to be that each and all of the heirs of Samuel Hammond, deceased, who are parties plaintiff to this suit have entered into agreements with one James L. D. Morrison, also a party plaintiff herein, by the terms of which said Morrison has bound himself, at his own proper costs and charges, to employ counsel and prosecute all suits in the courts of Missouri necessary to recover from this defendant and others the possession of United States survey No. 2500,
11 located under New Madrid certificate No. 161, within which said survey the lot of ground herein sued for is located and of which it is a part, and to pay all necessary fees, charges, and costs of court that might be incurred in the prosecution and maintenance of such suits, both in his own name and the names of the other plaintiffs, not only for the interest which defendant charges is reserved to him by said agreements (the extent of which interest is unknown to defendant), but also for the interest which defendant charges is retained by the said parties plaintiff, heirs of Samuel Hammond, deceased (the extent of which said interest is also unknown to defendant); and this defendant says that in consideration of said unlawful agreements the said parties plaintiff, heirs of Samuel Hammond, deceased, have made and delivered divers and sundry deeds to the said Morrison (the exact nature and extent of which are unknown to defendant), by which they have conveyed to him, the said Morrison, certain interests (unknown to defendant) in the land herein sued for; and this defendant says that said deeds are absolutely void and of no effect whatever as against this defendant, because the same were obtained by the said Morrison from the said heirs of Samuel Hammond, deceased, in consideration of said unlawful agreements to maintain and prosecute such suits at his own proper costs and charges by the said Morrison in the name of himself and said Hammond heirs, plaintiffs herein, for the recovery of said lands; and the suit now pending and being prosecuted against the defendant is one of the suits so unlawfully and against public

policy agreed by the said Morrison with the said Hammond heirs, plaintiffs herein, to be maintained and prosecuted, and in consideration of the maint*ai*nance and prosecution of which at his, the said Morrison's, own proper costs and charges the said conveyance-
to said Morrison by the said Hammond heirs, plaintiffs
12 herein, were made.

And it says at the time of making such champertous agreements and conveyances and at the time of instituting this suit thereon this defendant's grantor, Logan D. Dameron, was in the notorious, actual, and exclusive peaceable and adverse possession of the land herein sued for, to wit, said lot of ground No. forty-six (46) of Peter Lindell's (2nd) second addition to the city of St. Louis, and he and those under whom he claimed had been in such possession, continuous in character, claiming for themselves and against all others as owners of said land for more than forty years before the making of said champertous agreements and conveyances and the instituting of this suit, and the said plaintiffs, heirs of Samuel Hammond, deceased, and the said James L. D. Morrison, had personal knowledge thereof at the time of their making said champertous agreements and deeds and instituting this suit thereon.

This defendant therefore says that said agreements and conveyances were against public policy and subversive of the peace and good order of society and oppressive and injurious to the rights of defendant, and that the said deeds thus made under said champertous agreements by the said parties plaintiff, heirs of Samuel Hammond, deceased, are absolutely void and of no effect and vested no title in the said Morrison as against this defendant, and that it is entitled to judgment in the action against said Morrison by reason of his having thus unlawfully obtained his title.

And it says it is against public policy, the best interests of society, and the rights of this defendant that the said parties plaintiff, heirs of Samuel Hammond, deceased, should be allowed to prosecute this suit against this defendant under said champertous agreements with the said Morrison, and that their said suit should
13 not be entertained, but should be dismissed by the court, and it is entitled to judgment in its favor and as against said heirs of Samuel Hammond, deceased, parties plaintiff herein, because this suit is being prosecuted for them by the said Morrison under said unlawful agreements.

And, further answering, this defendant states and charges the fact to be that one of the plaintiffs in this suit, to wit, Mary A. Washington, claimed to be entitled as one of the heirs of Samuel Hammond, deceased, to an undivided one-fifth ($\frac{1}{5}$) part or interest in the land described in the plaintiffs' petition herein; that prior to the month of May, 1874, she was informed by the said James L. D. Morrison, a plaintiff herein, that she had a lawful right to recover the possession of said land and was solicited by him, the said Morrison, to employ him to enter suit for the recovery of the possession of the same on a contingency of *of* part of the land, if recovered, and that subsequently, to wit, on the 16th day of said month of May,

1874, she entered into an agreement with the said James L. D. Morrison whereby he, the said Morrison, bound himself in the sum of ten thousand dollars (liquidated damages) unto her, the said Mary A. Washington, the condition of which obligation was such that whereas she "has employed the said James L. D. Morrison to institute and prosecute suits for the recovery of United States survey No. 2500, located under New Madrid certificate No. 161, at his own proper costs and charges, and in consideration of the services to be rendered by the said James L. D. Morrison in that behalf has executed and delivered to the said James L. D. Morrison her certain quitclaim deed, bearing even date with these presents, to the two-thirds of her undivided interest in said lands. * * *

"That the said James L. D. Morrison shall institute and
14 prosecute said suits on or before the thirteenth day of June, 1874, as well for the interest so conveyed to him as hereinbefore stated as that retained by the said Mary A. Washington in said above-described lands, at his entire costs and charges, and shall save the said Mary A. Washington free and shall keep her indemnified against liability for fees, costs, and charges to be expended in and about the bringing and prosecution of the same;" that on the same day this unlawful agreement was made between the said Mary A. Washington and the said Morrison, to wit, on the said 16th day of May, 1874, she conveyed to him by her deed of release and quitclaim of that date, two-thirds of her said undivided one-fifth ($\frac{1}{5}$) interest in said lands (which is equivalent to an undivided two-fifteenths ($\frac{2}{15}$) part of the whole land) in consideration of and as provided by said unlawful agreement; and this defendant says that the said conveyance thus made by the said Mary A. Washington to the said James L. D. Morrison on said 16th day of May, 1874, and on the title conveyed by which he sues in this case, is absolutely void and of no effect as against this defendant, because the same was made in consideration of said unlawful agreement to prosecute and maintain at his own proper costs and charges by the said Morrison suits in the name of himself and the said Mary A. Washington for the recovery of the lands named and described in the plaintiff's petition and described in said deed, and that the suit now pending and being prosecuted against this defendant is one of the suits so unlawfully and against public policy agreed by said Morrison with the said Mary A. Washington to be maintained and prosecuted and in consideration of the maint*ai*nance and prosecution of which the said conveyance to said Morrison by said Mary A. Washington was made.

15 It therefore says that said deed so made was and is intended to convey to said Morrison a part of the land in dispute between plaintiffs and defendant in consideration that said Morrison would employ counsel and prosecute suits and pay all necessary fees, charges, and costs of court that might be incurred in the prosecution and maint*ai*nace of such suits, both in his own name for his said interest acquired from her and in the name of said Mary A. Washington for the said interest retained by her, in the courts of Missouri, to recover from these defen-ants and others

the possession of United States survey No. 2500, located under New Madrid certificate No. 161.

And it says that at the time of the making of such champertous agreement and conveyance and at the time of instituting this suit thereon this defendant's grantor, Logan D. Dameron, was in the actual, exclusive, peaceable and adverse possession of the land herein sued for and he and those from whom he claimed had been in such possession, continuous in charater, claiming for themselves and against all others as owners of said lands for more than forty years before the making of said champertous agreement and deed and the said Morrison and the said Mary A. Washington had personal knowledge thereof at the time of making said agreement and deed and instituting this suit thereon; that said agreement was against public policy and subversive of the peace and good order of society and oppressive and injurious to the rights of this defendant, and that the said deed made under the said champertous agreement is absolutely void and of no effect and as against this defendant vested no title in the said Morrison.

And it says that it is against public policy and the best interests of society and the rights of this defendant that the said Mor-
16 rison should be allowed to prosecute this suit for the said undivided two-fifteenths ($\frac{2}{15}$) part of the said land herein sued for thus claimed by him through his said deed from said Mary A. Washington, but that this suit should be dismissed by the court, both as to the interest thus acquired by the said Morrison from the said Mary A. Washington and also as to the said undivided one-fifteenth interest therein retained as aforesaid by the said Mary A. Washington, and that this defendant is entitled to judgment in its favor and against said plaintiffs, Morrison and Washington, for said undivided interest in said land thus held by it.

And, further answering, this defendant says that the aforesaid deed, made on the 16th day of May, 1874, by the said Mary A. Washington to the said James L. D. Morrison was absolutely void and of no effect and passed no title to the said James L. D. Morrison, because the same was made in consideration of said unlawful agreement to maintain and prosecute at his, the said Morrison's, own proper costs and charges suits in the names of himself and the said Mary A. Washington for the recovery of the land named and described in the plaintiff's petition herein and described in said deed, and that subsequently, to wit, on the fifth day of February, 1881, the said Mary A. Washington, one of the plaintiffs herein, by her certain deed of date last-named day and year, conveyed to one Sylvester J. Fisher all her title in and to the land herein sued for, which these defendants charge to be an undivided one-fifth ($\frac{1}{5}$) part or interest of all of said land; that afterwards, on the 11th day of April, 1881, the said Sylvester J. Fisher and Alice, his wife, by their certain deed of date said last-named day and year, conveyed to Robert B. Wade all their right, title, and interest in said land acquired by said deed from Mary A. Washington;
17 that on the eleventh (11th) day of March, 1882, the said Robert B. Wade and Belle N. B., his wife, by their deed of that

date, conveyed to this defendant, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, all of their right, title, and interest in and to said lot No. forty-six (46) of Peter Lindell's second (2nd) addition to the city of St. Louis. Wherefore this defendant says that whatever title, if any, the said plaintiff, Mary A. Washington, may have had in the said land herein sued for was by virtue of the aforesaid conveyances vested in the said Connecticut Mutual Life Insurance Company of Hartford, Connecticut, and that it is therefore entitled to judgment in its favor and, as against said Mary A. Washington and James L. D. Morrison, for an undivided one-fifth ($\frac{1}{5}$th) part or interest of all the land sued for.

And, further answering, this defendant states and charges the fact to be that long prior to the institution of this suit, to wit, on or about the 20th day of June, 1873, the said Mary A. Washington executed and delivered her certain deed of date said last-named day and year to one John F. Darby, whereby she conveyed to him, the said Darby, all her right, title, and interest in United States survey No. 2500, located under New Madrid certificate No. 161 (of which the land herein sued for is a part), so that on the 16th day of May, 1874, the time she conveyed to the said James L. D. Morrison as aforesaid, and on the 13th day of June, 1874, the time this suit was brought, she had no title whatsoever to said land, having already, as above stated, parted with all her interest therein to the said Darby on the said 20th day of June, 1873, and this defendant says that the aforesaid conveyance, dated May 16th, 1874, from the said Mary A. Washington to the said James L. D. Morrison
18 was a deed of mere quitclaim, purporting to pass to the said Morrison the present right of the said Mary A. Washington in and to said land, and it says that at that time she had no right therein, and it further says that the said Morrison never gave the said Mary A. Washington any consideration whatsoever for the making of said deed to him, and that the sole inducement therefor was the aforesaid unlawful agreement made between them by which he was to prosecute said suits at his own proper costs and charges, and it says that at the time and long previous to the time the said Morrison received his deed of said release and quitclaim from the said Mary A. Washington to the said land she told him in person and he otherwise well knew and had notice and knowledge of the fact that she had already, as aforesaid, conveyed all her interest in said land to the said Darby, and that the said Morrison took his said deed from her with full knowledge of the fact that she had previously made and delivered said deed to Darby and had nothing left to convey to him, the said Morrison, and that he assumed all risk on account thereof.

Wherefore this defendant says that it is entitled to judgment in its favor and against said Mary A. Washington and said James L. D. Morrison for the said undivided one-fifth ($\frac{1}{5}$) interest in said land thus claimed jointly by said James L. D. Morrison and said Mary A. Washington.

And defendant, for further answer, says that the plaintiffs, in order to recover in this case, rely on the legal title alleged to have

been vested in one Samuel Hammond in 1823, which title they, the said plaintiffs, claim has passed to them by inheritance and by subsequent conveyances to it from the legal representatives of said Hammond.

19 Defendant says that whatever title, legal or equitable, was then or at any time vested in said Samuel Hammond was sold on the 8th day of October, 1823, under and by virtue of a certain judgment and execution by John K. Walker, the sheriff of St. Louis county, Missouri, and the same was on November 4th, 1823, by him, the said sheriff, conveyed as provided by law in such cases to Richard Relfe and Beverly Chew, the purchasers at said sheriff sale, and thereupon the said Relf and Chew became vested with all the title previously owned in said land by Samuel Hammond.

And defendant says that on the 20th day of March, 1840, the said Relfe and Chew conveyed by general warranty all their right in said land thus acquired to Peter Lindell, from whom this defendant claims by inheritance from said Peter Lindell, deceased, to his heirs, and from them by mesne conveyances to this defendant, and it says that Peter Lindell, from the date of said deed of Relfe and Chew, in March, 1840, held actual, adverse, open, notorious, and hostile possession of said lands against the said Hammond and the said Relfe and Chew and against all others under and by virtue of said deeds from Sheriff Walker and from Relfe and Chew up to October, 1861, when he died, and that thereafter his (the said Lindell's) heirs held like possession of said land up to the time of their conveyance thereof, since which time this defendant has in the same manner held like adverse possession thereof as the legal representative of said Lindell, claiming from him as its predecessor and successively from said Peter Lindell and under said sheriff's deed to this date.

Wherefore, having fully answered, this defendant prays judgment in its favor and against each and all of the parties plaintiff in this cause, and ask- to be hence dismissed without day and with *their* costs.

20 GLOVER AND SHEPLEY,
J. B. HENDERSON,
JAMES M. LEWIS,
Att'ys for Defendant.

Afterwards, on June 26th, 1884, a reply to parts of amended answer and a motion to strike out parts of amended answer were filed in said cause; which reply to parts of amended answer is in words and figures as follows, to wit:

Reply to Amended Answer.

In the Circuit Court in and for the City of St. Louis, State of Missouri, December Term, 1883.

DAVID L. HAMMOND, JAMES L. D. MORRISON, *et al.*, Plaintiffs,
vs.
LOGAN D. DAMERON, THE CONNECTICUT MUTUAL LIFE INS. CO., Defendants. } No. 30080.

And now come the plaintiffs, and, for replication to all that part of defendants' amended answer, filed January 10th, 1884, which alleges and sets up adverse possession of forty years or more by defendants or those under whom defendants claim, deny that said defendants or those under whom defendants claim had been in open, notorious, adverse, and continuous possession of the premises for ten years or more next before the commencement of this suit, and deny that defendants have any title or claim acquired by
21 such adverse possession in any part of said lands.

And for further answer plaintiffs deny that said Mary A. Washington, on the fifth day of February, 1881, or on any other day, conveyed to Sylvester J. Fisher one undivided fifth part of said land or any interest in said land, and deny that she, on that day or any other, made any conveyance of any interest in said land to said Fisher. Whether or not said Fisher afterwards, as alleged, undertook, by deed dated April 11th, 1881, or otherwise, to convey any or undertook to convey any interest in said land to Robert B. Wade, and also whether or not said Robert B. Wade and wife, on the day alleged or any other, undertook to convey any interest in said land to the defendant The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, these plaintiffs say they have no knowledge or information sufficient to form a belief.

Plaintiffs deny that by virtue of any conveyances specified in said answer that one-fifth or any interest in said land was conveyed to said defendant, or that defendant has any right to a judgment against said Morrison for any part of said land, or said Mary A. Washington.

Plaintiffs, further answering, deny that said Mary A. Washington, on the 20th day of June, 1873, conveyed all her interest in said land to one John F. Darby, and deny that the deed of said Washington, dated May 16th, 1874, to said J. L. D. Morrison was a mere quit-claim deed, and deny that said Morrison did not give to said Washington any lawful and valuable consideration for said deed to him, and deny that the sole inducement for said deed was an unlawful agreement between said Morrison and Washington.

Plaintiffs, for further replication, deny that long before the making of the said deed of the said Washington to said Morrison
22 that said Washington told said Morrison in person, or that he otherwise knew that *he* had conveyed all or any part of

her interest in said land to the said Darby, and deny that said Morrison took his deed with any knowledge, or any knowledge or information in any way, shape, or manner that she, said Washington, had made or delivered any deed to said Darby or took any such risk about any such deed.

Plaintiffs further deny that in order to recover in this case they rely on a legal title vested in Samuel Hammond in 1823, and deny that any title was in Samuel Hammond in 1823, but say that title to said land did not vest in said Samuel Hammond till 1833.

Plaintiffs deny that the title of said Hammond was sold on the 8th day of October, 1823, or on any other day by virtue of a judgment and execution against said Hammond by Sheriff Walker or any one, and deny there ever was any valid sheriff's deed to Relfe and Chew or any one else of said land.

Plaintiffs deny that on the 20th of March, 1840, or any time said Relfe and Chew, by attorney or otherwise, ever conveyed any title to said land to Peter Lindell.

And plaintiffs further deny that Peter Lindell, from the date of a deed to him by Relfe and Chew, held actual, adverse, open, notorious, and continuous possession of said land till his death under and by virtue of said alleged deed of Sheriff Walker and deed from said Relfe and Chew to said Lindell, and deny that said Lindell's heirs or representatives ever occupied or held possession of said land under said deeds.

D. T. JEWETT,
Att'y for Plaintiffs.

23 And afterwards, at the June term, 1884, of said circuit court, the following further proceedings were had in said cause, to wit:

Motion to Strike out Parts of Ans. Sustained.

SATURDAY, *July 19th*, 1884.

DAVID L. HAMMOND *et al.*
vs.
LOGAN D. DAMERON *et al.*

The court, having fully considered the motion to strike out parts of amended answer of Conn. Mutual Life Ins. Co., doth order that said motion be sustained.

Which amended answer as amended by striking out is in words and figures as follows, to wit:

Amended Answer with Parts Stricken Out.

CITY OF ST. LOUIS, *State of Missouri,* } ss:

In the Circuit Court of the City of St. Louis, December Term, 1883, Room 5.

DAVID L. HAMMOND, JAMES L. D. MORRISON, *et al.*, Plaintiffs,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY (a Corporation) and LOGAN D. DAMERON, Defendants. } Case No. 30080.

Now, at this day, comes The Connecticut Mutual Life Insurance Company (a corporation), one of the defendants in the above-entitled cause, and, by leave of court first being had and obtained, files this its separate and amended answer, and denies each and every allegation in plaintiffs' petition contained except as hereinafter specifically admitted.

24 For a further answer this defendant denies that it is in possession of all of United States survey No. 2500, located under New Madrid certificate No. 161, as charged in plaintiffs' petition herein, but says it is in possession of a part of said survey only, to wit, of lot No. forty-six (46) of Peter Lindell's second (2nd) addition to the city of St. Louis, bounded on the north by Maryland avenue, on the east by Cornelia avenue, on the south by Lindell avenue, and on the west by Taylor avenue; and this defendant says that for more than forty years prior to the 13th day of June, 1874 (the day this suit was brought), it and its grantors and those under whom it claims have been in the actual, open, notorious, uninterrupted, peaceable, exclusive, and adverse possession of said lot No. forty-six (46) of Peter Lindell's second addition to the city of St. Louis, claiming title thereto against all the world, and that the title of plaintiffs, if any they ever had, is barred by the statute of limitations and vested in this defendant by virtue of such possession.

And, further answering, this defendant says that neither the plaintiffs herein nor their ancestors, predecessors, grantors, or any other person under whom they claim were seized or possessed of said lot No. forty-six (46) of Peter Lindell's second (2nd) addition to the city of St. Louis, or any part thereof, within ten years next preceding the commencement of this suit; wherefore the cause of action of plaintiffs, if any they ever had, is barred by the statute of limitations in such cases made and provided.

And that subsequently, to wit, on the 5th day of February, 1881, the said Mary A. Washington, one of the plaintiffs herein, by her certain deed, of date last-named day and year, conveyed to one Syl-

vester J. Fisher all her title in and to the land herein sued
25 for, which these defendants charge to be an undivided one-fifth (1/5th) part or interest of all said land; that afterwards, on the 11th day of April, 1881, the said Sylvester J. Fisher and Alice, his wife, by their certain deed, of date last-named day and year, conveyed to Robert B. Wade all their right, title, and interest in said land acquired by said deed from Mary A. Washington; that on the eleventh (11th) day of March, 1882, the said Robert B. Wade and Belle N. B., his wife, by their deed of that date, conveyed to this defendant, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, all of their right, title, and interest in and to said lot No. forty-six (46) of Peter Lindell's second (2nd) addition to the city of St. Louis; wherefore this defendant says that whatever title, if any, the said plaintiff, Mary A. Washington, may have had in said land herein sued for was by virtue of the aforesaid conveyances vested in the said Connecticut Mutual Life Insurance Company of Hartford, Connecticut, and that it is therefore entitled to judgment in its favor and as against said Mary A. Washington and said James L. D. Morrison for an undivided one-fifth (1/5th) part or interest of all the land herein sued for.

And, further answering, this defendant states and charges the fact to be that long prior to the institution of this suit, to wit, on or about the 20th day of June, 1873, the said Mary A. Washington executed and delivered her certain deed, of date said last-named day and year, to one John F. Darby, whereby she conveyed to him, the said Darby, all her right, title, and interest in United States survey No. 2500, located under New Madrid certificate No. 161 (of which the land herein sued for is a part), so that on the 16th day of May, 1874, the time she conveyed to the said James L. D. Morrison as aforesaid, and on the thirteenth day of June, 1874, the time
26 this suit was brought, she had no title whatever to said land, having already, as above stated, parted with all her interest therein to the said Darby on the said 20th day of June, 1873; and this defendant says that the aforesaid conveyance, dated May 16th, 1874, from the said Mary A. Washington to the said James L. D. Morrison, was a deed of mere quitclaim purporting to pass to the said Morrison the present right of the said Mary A. Washington in and to said land, and it says that at that time she had no right therein; and it further says that the said Morrison never gave the said Mary A. Washington any consideration whatsoever for the making of said deed to him, and that the sole inducement therefor was the aforesaid unlawful agreement made between them, by which he was to prosecute said suits at his own proper costs *at his own proper costs* and charges; and it says that at the time, and long previous to the time, the said Morrison received his deed of said release and quitclaim from the said Mary A. Washington to the said land she told him in person, and he otherwise well knew and had notice and knowledge of the fact, that she had already, as aforesaid, conveyed all her interest in said land to the said Darby, and *and* that the said Morrison took his said deed from her with full knowledge of the fact that she had previously made and delivered said deed to Darby,

and had nothing left to convey to him, the said Morrison, and that he assumed all risk on account thereof.

Wherefore this defendant says that it is entitled to judgment in its favor and against said Mary A. Washington and said James L. D. Morrison for the said undivided one-fifth (1/5th) interest in said land thus claimed jointly by said James L. D. Morrison and said Mary A. Washington.

And defendant for further answer says that the plaintiffs,
27 in order to recover in this case, rely on the legal title alleged to have been vested in one Samuel Hammond in 1823, which title they, the said plaintiffs, claim has passed to them by inheritance and by subsequent conveyances to it from the legal representatives of said Hammond.

Defendant says that whatever title, legal or equitable, was then or at any time vested in said Samuel Hammond was sold on the 8th day of October, 1823, under and by virtue of a certain judgment and execution by John K. Walker, the sheriff of St. Louis county, Missouri, and the same was on November 4th, 1823, by him, the said sheriff, conveyed, as provided by law in such cases to Richard Relfe and Beverly Chew, the purchasers at said sheriff's sale, and thereupon the said Relfe and Chew became vested with all the title previously owned in said land by Samuel Hammond.

And defendant says that on the 20th day of March, 1840, the said Relfe and Chew conveyed, by general warranty, all their right in said land thus acquired to Peter Lindell, from whom this defendant claims by inheritance from said Peter Lindell, deceased, to his heirs, and from them by mesne conveyances to this defendant; and it says that Peter Lindell from the date of said deed from Relfe and Chew, in March, 1840, held actual, adverse, open, notorious, and hostile possession of said lands against the said Hammond and the said Relfe and Chew and against all others under and by virtue of said deeds from Sheriff Walker, and from Relfe and Chew, up to October, 1861, when he died; and thereafter his (the said Lindell's) heirs held like possession of said land up to the time of their conveyance thereof, since which time this defendant has in the same manner held like adverse possession thereof as the legal representative of said Lindell, claiming from him as its predecessor
28 and successively from said Peter Lindell and under said sheriff's deed to this date.

Wherefore, having fully answered, this defendant prays judgment in its favor and against each and all of the parties plaintiff in this cause and ask- to be hence dismissed without day and with *their* costs.

GLOVER AND SHEPLEY,
J. B. HENDERSON,
JAMES M. LEWIS,
Att'ys for Defendant.

Bill of Exceptions Filed.

SATURDAY, *August 2nd*, 1884.

DAVID L. HAMMOND *et al.*
vs.
LOGAN D. DAMERON *et al.*

Now comes the defendant The Connecticut Mutual Life Insurance Co., by attorneys, and tenders a bill of exceptions, which is allowed, signed and sealed, and filed and made a part of the record herein; which bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

In the Circuit Court of the City of St. Louis, June Term, 1884.

DAVID L. HAMMOND *et al.*, Plaintiffs,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *et al.*, Defendants. } No. 30080.

29 Be it remembered that in the progress of the above-entitled cause the following proceedings were had, to wit: This defendant, The Connecticut Mutual Life Insurance Company, on the 10th day of January, 1884, filed this its separate amended answer to the petition of plaintiffs herein, the same being in words and figures as follows:

(For amended answer see page 4 of this transcript.)

And afterwards, to wit, on the 26th day of January, 1884, the plaintiffs filed their motion to strike out certain parts of said amended answer, the same being in words and figures as follows:

Motion to Strike Out Parts of Amended Answer.

In the Circuit Court in and for the City of St. Louis, State of Missouri, December Term, 1883.

DAVID L. HAMMOND *et al.*, Plaintiffs,
vs.
LOGAN D. DAMERON and THE CONNECTICUT MUTUAL LIFE INS. CO., Defendants. } No. 30080.

And now come plaintiffs and move the court to strike out all that part of defendants' amended answer filed January 10th, 1884, commencing on the twenty-first line of second page of said answer, with the words:

"And, further answering, this defendant states and charges the fact to be that each and all of the heirs," &c., and continuing to the eighteenth line of page nine, ending with these words:

30 "Mary A. Washington, for the recovery of the land named and described in the plaintiffs' petition herein and described in said deeds"—

Because plaintiffs say that all that part of defendants' answer sets up irrelevant and immaterial matter, which, if true, constitutes no answer or defense to this action, inasmuch as it sets up, with much redundancy of words and phrases, an alleged champertous agreement between James L. D. Morrison, one of the plaintiffs, and the other plaintiffs in this suit as to the terms and conditions relative to costs and attorneys' fees to be incurred in the prosecution of this suit.

Because whatever may be the terms and conditions agreed upon between the plaintiffs as to the payment of costs and expenses properly incurred in the prosecution of this suit as among themselves it is none of the business of these defendants and does not and cannot properly or lawfully affect any lawful and proper rights these plaintiffs have against these defendants, and defendants cannot protect themselves in the unlawful withholding from plaintiffs this land, even if there is an agreement between plaintiffs as to costs, fees, and expenses, which could not be enforced; it is no excuse for defendants to rob plaintiffs of their land.

D. T. JEWETT,
Att'y for Plaintiffs.

Which said motion above set forth the court did on the 19th day of July, 1884, sustain, and thereupon ordered the parts of said defendants' answer specified in said motion to be stricken out, which was done; to which action of the court said defendant, The Connecticut Mutual Life Insurance Company, then and there at
31 the time duly excepted, and thereupon this defendant, The Connecticut Mutual Life Insurance Company, presents this its bill of exceptions herein and prays that it be signed, sealed, and made part of this record, which is accordingly done at the same term.

AMOS M. THAYER, *Judge.* [SEAL.]

I see no objection to this.
St. Louis, July 26th, 1884.

D. T. JEWETT,
Att'y for Pl'ffs.

Dismissal as to L. D. Dameron.

WEDNESDAY, *August 6th*, 1884.

DAVID L. HAMMOND *et al.*
vs.
LOGAN D. DAMERON *et al.*

On motion of plaintiffs, by attorney, it is ordered that this cause be dismissed as to the defendant Logan D. Dameron, and on further motion of said plaintiffs it is ordered that this cause be dismissed

as to so much of United States survey No. 2500 as lies within lot No. 55 of Peter Lindell's second addition to the city of St. Louis, bounded northerly by Pine street, easterly by Lay avenue, southerly by Laclede avenue, and westerly by King's highway.

And afterwards, at the October term, 1888, of said circuit court, the following further proceedings were had in said cause, to wit:

Motion: E. C. Smith to be Made Party Plaintiff.

MONDAY, *October* 15*th*, 1888.

DAVID L. HAMMOND *et al.*
vs.
THE CONN. MUT. LIFE INS. CO.

32 Motion of E. C. Smith to be made party plaintiff filed.

Death of Morrison Suggested.

WEDNESDAY, *October* 17*th*, 1888.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *et al.*

Now, at this day, comes H. H. Denison, Esq., attorney for plaintiffs herein, and suggests to the court the death of James L. D. Morrison, and it is ordered by the court that this cause be continued.

E. C. Smith Made Party Plaintiff.

FRIDAY, *October* 26*th*, 1888.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO. *et al.*

Now, at this day, the motion heretofore filed herein by E. C. Smith to be made a party plaintiff herein being submitted to the court, and the court having heard the same and being fully advised thereof, and it appearing to the court that E. C. Smith has become the sole grantee of plaintiffs Sarah G. Hammond and grantee of the interests conveyed by James L. D. Morrison and Samuel E. Hammond by deeds duly exhibited to the court, it is ordered by the court that said motion be sustained, and that Edward C. Smith be made a party plaintiff herein.

And afterwards, at the February term, 1889, of said circuit court, the following further proceeding was had in said cause, to wit:

33 *Cause Revived in Name of Heirs of J. L. D. Morrison.*

TUESDAY, *February* 12*th*, 1889.

DAVID L. HAMMOND, SAMUEL E. HAMMOND, CHARLES S. HAMmond, Sarah G. Hammond, Mary A. Washington, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, William F. Barsh and Augusta G. Barsh, His Wife; Thomas M. Price and Catharine V. Price, His Wife; Joseph S. McKie and Anna W. McKie, His Wife; and Louella McC. Kingman, Carrie Kingman, Clement S. Kingman, Martha J. Kingman, William A. Kingman, Laura Virginia Briquet, by Their Curator, E. H. Hesse, and E. C. Smith,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now, at this day, comes the defendant, by attorney, and presents to the court its motion this day filed, duly verified by affidavit, and it appearing to the court that the death of James L. D. Morrison, one of the plaintiffs herein, hath been heretofore suggested and this cause continued without any lease being taken or any orders made in relation to the continuation of said suit in the names of the heirs of the said Morrison, and it being suggested by the defendant that said Morrison died testate, and that, under the terms of his last will, which has been duly probated in the probate court of the city of St. Louis, his heirs and devisees under said will are

34 his widow, Julia A. Morrison his daughter; Mary E. Carr, wife of Joseph C. Carr, and his daughter Virginia A. Morrison, all of the city of St. Louis, Missouri, and his daughter Adele L. M. Kelley, wife of Albert T. Kelley, residents of the city of New York, State of New York, wherefore, on motion of said defendant, by attorney, it is ordered by the court that this cause be revived and proceed in the names of Julia A. Morrison, Mary E. Carr and Joseph P. Carr, her husband; Virginia A. Morrison, Adele L. M. Kelley and Albert T. Kelley, her husband, as parties plaintiffs, unless good cause to the contrary be shown by said Julia A. Morrison, Mary E. Carr and Joseph P. Carr, and Virginia A. Morrison at the next term of this court; and it is ordered by the court that a summons issue herein directed to said Julia A. Morrison, Mary E. Carr and Joseph P. Carr, her husband, and Virginia A. Morrison, returnable to the next term of this court; and it appearing to the court that the said Adele L. M. Kelley and Albert Kelly are non-residents of the State of Missouri, wherefore, on motion of said defendant, by attorney, it is ordered by the court that they be notified to appear at the June term, 1889, of this court and show cause, if any they have, against said reviver as to them; and it is further ordered that a copy hereof be published according to law in the St. Louis Republic, a newspaper printed and published in the city of St. Louis.

On February 12th, 1889, a *scire facias* was issued in obedience to said order and is in words and figures as follows, to wit:

Scire Facias.

STATE OF MISSOURI, } ss:
City of St. Louis, }

35 The State of Missouri to the sheriff of the city of St. Louis, Greeting:

We command you to summon Julia A. Morrison, Mary E. Carr and Joseph P. Carr, her husband, and Virginia A. Morrison to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis, at the court-house, in said city, on the first Monday of April next, then and there to show cause, if any they have, within the first four days of the April term, 1889, why the cause wherein David L. Hammond *et al.* are plaintiffs and The Connecticut Mutual Life Insurance Company is defendant (No. 30080), now pending in our said court, should not be revived and proceed in their names as the heirs of James L. D. Morrison, deceased, one of the plaintiffs in said cause; and have you then and there this writ.

Witness Philip H. Zepp, clerk of our said court, with the seal thereof hereto affixed, at office, in the city of St. Louis,
[SEAL.] this 12th day of February, in the year of our Lord eighteen hundred and eighty-nine.

PHILIP H. ZEPP, *Clerk.*

Upon said writ the sheriff of the city of St. Louis made a return in words and figures as follows, to wit:

Sheriff's Return.

Executed this writ in the city of St. Louis on the 15th day of February, 1889, by delivering a copy of the writ as furnished by the clerk to the following within-named defendants, Joseph P. Carr and Virginia A. Morrison, and further executed this writ in the city of St. Louis on the same day by leaving a copy of the writ as furnished by the clerk at the usual place of abode of each of the following within-named defendants, Mary E. Carr and Julia
36 A. Morrison, with a member of their family over the age of 15 years.

JOHN H. POHLMAN, *Sheriff,*
By H'Y W. WIEGAND, *Deputy.*

And afterwards, at the April term, 1889, of said circuit court, the following further proceeding was had in said cause, to wit:

Appearance of A. L. Morrison et al.

SATURDAY, *June 1st*, 1889.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now, at this day, come Julia Ann Adele Sarpy Morrison, Mary Eliza Carr and Joseph P. Carr, her husband; Adele L. Morrison Kelly and Albert T. Kelly, her husband, and Virginia Abernetty Morrison, heirs and legal representatives of James L. D. Morrison, by their attorney, and enter their appearance as parties plaintiffs.

And afterwards, at the October term, 1889, of said circuit court, the following further proceeding was had in said cause, to wit:

Proof of Publication Filed.

TUESDAY, *October 8th*, 1889.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Proof of publication filed; which proof of publication is as follows, to wit:

Proof of Publication.

STATE OF MISSOURI, } *ss*:
City of St. Louis, }

37 Personally appeared before the undersigned, a notary public within and for the city and State aforesaid, Charles W. Knapp, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the St. Louis Republic, printed within the said city and State, of which he is one of the publishers, for 4 times, the first insertion being on the 13th day of April and the last insertion on the 4th day of May, 1889, as follows:

1st time, 13 April.
2nd time, 20 "
3rd time, 27 "
4th time, 4 May.

CHAS. W. KNAPP.

Sworn to and subscribed before me this fourth day of May, 1889.
[SEAL.] JOSEPH G. HOLLIDAY,
Notary Public, City of St. Louis.

Printer's fee	5 50
Affidavit	50
	$6 00

Advertisement.

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Circuit Court, City of St. Louis, February Term, 1889.

TUESDAY, *February 12th*, 1889.

DAVID HAMMOND, SAMUEL E. HAMMOND, CHARLES L. Hammond, Sarah G. Hammond, Mary A. Washington, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, William F. Barsh, and Agusta G. Barsh, His Wife; Thomas M. Price and Catharine V. Price, His Wife; Joseph S. McKie and Anna W. McKie, His Wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura Virginia Briquet, by Their Curators, E. H. Hesse and E. C. Smith,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 30080.

38 Now, at this day, comes the defendant, by attorney, and presents to the court its motion, this day filed, duly verified by affidavit; and it appearing to the court that the death of James L. D. Morrison, one of the plaintiffs herein, hath been heretofore suggested and this cause continued without any lease being taken or any orders made in relation to the continuation of said suit in the names of the heirs of the said Morrison, and it being suggested by the defendant that said Morrison died testate, and that under the terms of his last will, which has been duly probated in the probate court of the city of St. Louis, his heirs and devisees under said will are his widow, Julia A. Morrison; his daughter, Mary E. Carr, wife of Joseph P. Carr, and his daughter, Virginia A. Morrison, all of the city of St. Louis, Mo., and his daughter, Adele L. M. Kelly, wife of Albert T. Kelly, residents of the city of New York, State of New York: wherefore, on motion of said defendant, by attorney, it is ordered by the court that this cause be revived and proceed in the names of said Julia A. Morrison, Mary E. Carr, and Joseph P. Carr, her husband; Virginia A. Morrison, Adele L. M. Kelly and Albert T. Kelly, her husband, as parties plaintiff, unless good cause to the contrary be shown by said Julia A. Morrison, Mary E. Carr, and Joseph P. Carr and Virginia A. Morrison at the next term of this court; and it is ordered by the court that a summons issue herein, directed to said Julia A. Morrison, Mary E. Carr, and Joseph P. Carr, her husband, and Virginia A. Morrison, returnable to the next term of this court; and it appearing to the court that the said Adele L. M. Kelly and Albert T. Kelly are non-residents of the State of Missouri: wherefore, on motion of said defendants, by attorney, it is ordered by the court that they be noti-

fied to appear at the June term, 1889, of this court and show
39 cause, if any they have, against said reviver as to them; and it is further ordered that a copy hereof be published, according to law, in the St. Louis Republic, a newspaper printed and published in the city of St. Louis.

A true copy from the record.

[SEAL.] Witness my hand and seal of said court this 13th day of February, A. D. 1889.

PHILIP H. ZEPP, *Clerk.*

JOHN B. HENDERSON AND
REYNOLDS AND LEWIS,
Attorneys for Plaintiffs.

Cause Dismissed as to Certain Parties.

MONDAY, *October* 21*st*, 1889.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

On motion of D. T. Jewett, Esq., attorney for plaintiffs herein, it is ordered by the court that this cause be dismissed as to the plaintiffs Samuel G. Hammond, Sarah E. Hammond, and E. H. Hesse, curator.

And afterwards, at the December term, 1889, of said circuit court, the following further proceedings were had in said cause, to wit:

Judgment.

MONDAY, *January* 6*th*, 1890.

DAVID L. HAMMOND, SARAH G. HAMMOND, CHARLES S. HAMmond, Sarah G. Hammond, Mary A. Washington,
40 Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, William F. Barsh, and Augusta C. Barsh, His Wife; Thomas M. Price and Catharine C. Price, His Wife; Joseph S. McKie and Anna W. McKie, His Wife, and Louella McL. Kingman, William S. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura Virginia Briquet, by Curator- E. H. Hesse, Edward C. Smith, and Julia A. Morrison, Mary E. Carr, and Joseph P. Carr, Her Husband; Virginia A. Morrison, Adele Kelly and Albert T. Kelly, Her Husband, Heirs of James L. D. Morrison, Deceased, } 30080.
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now, at this day, come said parties, by their respective attorneys, and, this cause coming on for hearing, said parties, waiving a jury, submit this cause to the court upon the evidence and proof ad-

duced, and the court, having heard the same and being fully advised thereof, finds the issues herein joined in favor of the defendant; therefore, it is considered by the court that the plaintiffs take nothing by their suit in this behalf, but that the defendant go hereof without day and recover of the plaintiffs its costs and charges herein expended and have execution therefor. Instructions filed.

Motion for New Trial Filed.

THURSDAY, *January 9th*, 1890.

41 DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Motion for new trial filed.

And afterwards, at the April term, 1890, of said circuit court, the following further proceedings were had in said cause, to wit:

Motion for New Trial Overruled.

MONDAY, *April 7th*, 1890.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now, at this day, the motion heretofore filed herein for a new trial, being submitted to the court and duly considered, is overruled.

Time to File Bill of Exceptions.

SATURDAY, *May 31st*, 1890.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now, at this day, come the plaintiffs, by attorney, and on their motion it is ordered by the court that the plaintiff have until June 18th, 1890, to file bill of exception- herein.

And thereupon the plaintiffs file herein an affidavit for appeal, and on their motion it is ordered by the court that the plaintiffs be allowed an appeal to the supreme court of the State of Missouri from the judgment delivered herein.

Which affidavit for appeal is in words and figures as fol-
42 lows, to wit:

Affidavit for Appeal.

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Circuit Court, City of St. Louis, April Term, 1890.

D. L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } Affidavit for Appeal.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Edward C. Smith, being duly sworn, makes oath and says that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

EDWARD C. SMITH.

Subscribed and sworn to before me this thirty-first day of May, A. D. 1890.

PHILIP H. ZEPP, *Clerk.*

And afterwards, at the June term, 1890, of said circuit court, the following further proceeding was had in said cause, to wit:

Bill of Exceptions Filed.

WEDNESDAY, *June 18th*, 1890.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. }

Stipulation as to bill of exceptions filed.

43 Now, at this day, come the plaintiffs, by attorney, and present to the court their bill of exceptions, which is allowed, signed, and sealed, is filed herein and made a part of the record in this cause; which said stipulation and bill of exceptions are in the words and figures as follows, to wit:

Stipulation.

In the Circuit Court, City of St. Louis.

DAVID L. HAMMOND *et al.*, Plaintiffs,
vs.
CONN. MUTUAL LIFE INS. CO., Defendant. } No. 30080.

It is hereby agreed in the above-entitled cause that in making up the transcript for the Supreme Court the clerk need not copy the

Stokes deed by U. S. marshal to O'Fallon, of 1825, nor the O'Fallon deed to Lindell, of 1827, it being admitted that the Stokes title passed to Lindell by said deeds. These deeds are called for on page — of the bill of exceptions, but the date and purport of said deeds shall be stated in the transcript.

It is further agreed that the large exhibit, known as "Exhibit No. 43," introduced by plaintiff, need not be copied in the transcript, but that original exhibit may be used in the appellate courts and read from the same as if it were copied in the record, and is to be taken by the court the same as if it had been actually copied into the transcript.

It is further agreed that either party may use in the appellate courts any maps made for either party by William H. Cozzens and used in the trial court without having the same included in the transcript, but all such maps are to be taken by the court as forming a part of said transcript.

44

It is further agreed and stipulated that for the perfecting of a proper and accurate transcript for the appeal to the Supreme Court all and any documents or maps used and introduced in evidence by either party upon the trial thereof, which may have been by accident or oversight omitted from the bill of exceptions, may be copied into the transcript by the clerk with the approval of the court, and the adverse party shall be notified of such admission and a desire to have the same inserted, and if the parties cannot agree to its insertion, then the matter shall be referred to the court, and if the court shall say that said evidence or document has been omitted, that it shall be inserted or taken by the court as if fully set forth in the same manner as if the same had been called for by the bill of exceptions before the same was signed by the court, or the same may be used in the appellate court without being copied into transcript by consent of adverse party, and any and all statutes and proclamations called for by the bill of exceptions or desired to be used by either party in the appellate court need not be copied into the transcript, but may be read from the U. S. Statutes at Large or from other properly authorized publications.

If the cause should go by writ of error to the Supreme Court of the U. S., then a statement or stipulation, signed by the parties, shall be filed in the supreme court of Missouri, showing the papers, maps, documents, statutes, and other evidence there used and not copied into the transcript of the trial court, and such stipulation or statement shall constitute a part of the transcript sent from the supreme court of Missouri to the Supreme Court of the U. S.; and at that time when either party uses any evidence not copied into the trial court record, the other party may require him to file in court a statement admitting such use and describing the evidence so used.

45

It is further agreed that the clerk need not copy into the transcript the deed of Rufus Easton to the United States, dated November 1st, 1816, it being admitted that said deed was a conveyance by Rufus Easton to the U. S. of the head-right of Joseph Hunot,

Easton being the legal representative of Hunot by mesne conveyance.

D. T. JEWETT,
Att'y for Pl'ffs.
REYNOLDS AND LEWIS,
Att'ys for Defendants.

Bill of Exceptions.

In the Circuit Court, City of St. Louis, State of Missouri.

DAVID L. HAMMOND *et al.*
vs.
CONNECTICUT MUTUAL LIFE INSURANCE CO. } No. 30080.

Appearances: Messrs. D. T. Jewett and Henry H. Denison, for plaintiffs; Messrs. Reynolds and Lewis, for defendant.

It is agreed by the parties that the lot in controversy is bounded on the east by Newstead avenue, on the south by Lindell avenue, on the north by Maryland avenue, comprising about ten acres of land, known as lot 46 of Peter Lindell's second addition to the city of St. Louis, in city block No. 3899.

46 Counsel for plaintiffs offer in evidence the minutes of commissioner for adjusting titles to lands in Louisiana January 31st, 1811, Joseph Hunot claiming 800 arpents of land situate — portage of River St. Francis, district of New Madrid. Testimony taken at New Madrid June 20th, 1808, by Frederick Bates, commissioner, by authority from the board. Claim rejected.

Testimony Before Board of Commissioners.

THURSDAY, *January* 31*st*, 1811.

Board met.

Present: John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Joseph Hunot, claiming 800 arpens of land situate — portage of River St. Francois, district of New Madrid, produces to the board a permission to settle from Francois Lesieur, dated 20th June, 1802.

The following testimony in the foregoing claim taken at New Madrid June 20th, 1808, by Frederick Bates, commissioner, by authority from the board:

Francis Treuchard, duly sworn, says that premises *was* inhabited and cultivated in the year 1802 and constantly to this time; 7 or 8 acres now in cultivation; a wife, three children, and an orphan child in the year 1803.

It is the opinion of the board that this claim ought not to be granted.

Board adjourned till Saturday next, ten o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

47

OFFICE OF THE
U. S. RECORDER OF LAND TITLES,
ST. LOUIS, *December 18th*, 1873.

This is to certify that the above is truly copied from page 105 of a book marked "Commissioners' Minutes No. 5" of the proceedings of the old or first board of commissioners, appointed under the act of Congress of the 2d March, 1805, which book is up to this day on file in this office.

STILLMAN O. FISH, *Recorder*.

Also State Papers, vol. 2, page 435, for reference only.

After this claim was filed before the old board and before it was rejected Joseph Hunot, on the 12th day of May, 1810, by deed acknowledged on the same day and recorded on June 6th, 1815, in New Madrid county, for 800 arpens of land situate at Big Portage of River St. Francis, district of New Madrid, to Joseph Vandenbenden.

Deed from Joseph Hunot to J. Vandenbenden.

On the 6th day of June, in the year 1815, received for and the same day recorded the following deed of conveyance:

This indenture made this twelfth day of May, in the year one thousand eight hundred and two, by and between Joseph Hunt*o*t of the district of New Madrid in the Territory of Louisiana, *Territory*, of the one part, and Joseph Vandenbemden of the district and Territory of the other part, witnesseth, that he the said Joseph Hunot, for and in consideration of the sum of one hundred dollars, to him in hand paid the receipt whereof he does hereby acknowledge and him the said Joseph Vandenbemden for the same exonerated, discharged and acquitted, has this day granted, bargained and sold and do- by these presents grant, bargain and sell, alienne, release,
48 convey and confirm to him the said Joseph Vandenbemden, all that tract of land containing eight hundred arpents more or less, situated and lying in said district of New Madrid at the Big Portage so called near the northeast fork of the River St. Francis, on the N. W. bank thereof, and op-osite the mouth of the creek called the bay—about twenty miles westwardly from the town of New Madrid, being the head-right *right* or the settlement claim of the said Joseph Hunot, under the second section of the act of Congress respecting such claims, claimed by him the said Joseph Hunot, before the board of commissioners &c. which said tract of eight hundred arpents of land more or less, is hereby granted, bargained and sold to the said Joseph Vandenbemden, his heirs and assigns. To have and to hold forever—and moreover he the said Joseph Hunot, for himself and his heirs &c, covenants and agrees to and with the said Joseph Vandenbemden his heirs and assigns to warrant and defend, the said tract of land above sold, to him the said Joseph Vandenbemden, from the lawful claim or claims of any person claiming the same through by or under him the said Joseph Hunot, but should the claim not be held good by — Government, and the

same or any part of the said tract should not be granted, he the said Joseph Vandenbemden, to loose the same and he the said Joseph Hunot to be in nowise responsible therefor. In witness whereof, the said Joseph Hunot, has hereunto affixed his seal and subscribed his name the date above.

his
JOSEPH x HUNOT. [SEAL.]
mark.

Test: JOSH. HUMPHREYS.
MARTIN *RTHOED.*

49 LOUISIANA TERRITORY, }
District of New Madrid, } *sct:*

This day the within-named Joseph Hunot personally appeared before me, Joshua Humphreys, a justice of the peace in said district, and acknowledged the within instrument of writing to be his act and deed for the purposes therein expressed, and all the lands therein mentioned and intended to be sold was thereby granted, bargained, and sold to *to* the therein-named Joseph Vandenbernden, his heirs and assigns; to have and to hold forever.

Given under my hand and private seal this twelfth day of May, 1810.

JOSH. HUMPHREYS, *J. P.* [SEAL.]

To Frederick Bates, Esq're, recorder of land claims within and for the Territory of Missouri.

SIR: By virtue of the within transfer and right of location I do locate the quantity of land which I am entitled to westwardly of the tract granted to Joseph Estu, in the county of New Madrid, and adjoining the lands of Charles Crabin southwardly.

New Madrid, May 9th, 1815.

J'H VANDENBEMDEN.

STATE OF MISSOURI, }
County of New Madrid, } *ss:*

I, John A. Mott, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify the foregoing to be a full, true, and complete copy of a deed and of the record thereof from Joseph Hunot to Joseph Vandenbemden, together with the certificate of acknowledgment, as the same now appears of record in Book No. Six (6), one of the records of land titles of said county, at page six (6).

50 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, this 8th day of April, A. D. 1874.
[SEAL.]

JOHN A. MOTT,
Clerk and ex Officio Recorder.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, 1874, at 10.40 a. m., and is duly recorded in Book 491, at page 434.

Witness my hand and official seal at same date.

[SEAL.] W. C. KENNETT, *Recorder.*

That title was confirmed by the recorder of land titles and he was granted 800 arpents.

By Mr. JEWETT: I will call the attention of the court to the fact that by act of Congress, April 29th, 1816, United States Statutes-at-Large, vol. 3, p. 328, the confirmations made by the recorder of land titles were confirmed by act of Congress, making a complete title to the New Madrid land in Joseph Hunot or his legal representatives.

On the 4th day of November, 1815, Joseph Vandenbermden conveyed the same land to Rufus Easton and it was acknowledged on the same day and recorded Nov. 6th, 1815, in New Madrid county, 640 acres on Portage bay of River St. Francis, county of New Madrid, and confirmed by the recorder of land titles to Joseph Hunot and by him conveyed to Joseph Vandenbenden May 12th, 1810.

Deed from J. Vandenbenden to Rufus Easton.

51 This deed, made this fourth day of November, in the year of our Lord one thousand eight hundred and fifteen, by and between Joseph Vanden Benden, of the town of New Madrid in the county of New Madrid and Territory of Missouri, of the one part and Rufus Easton of the town of St. Louis, in said Territory of the other part, witnesseth: That the said Joseph Vanden Benden for and in consideration of one hundred and fifty dollars to him in hand paid, by the said Rufus Easton, the receipt whereof he does hereby confess and acknowledge, and the said Rufus Easton from the payment thereof acquit and discharge, hath granted, bargained, sold and assigned, and by these presents doth grant, bargain sell and assign unto the said Rufus Easton, and to his heirs and assigns forever six hundred and forty acres of land, situate at a place called the Portage bay of St. Francis, in the county of New Madrid and Territory of Missouri aforesaid, and which tract of land has been confirmed to Joseph Hunot by the recorder of land titles for the Territory of Missouri, and by him granted to said Hunot at 640 acres of land Portage bay St. Francis, and which tract of land the said Joseph Hunot conveyed to the said Vandenbenden by deed dated 12th May 1810, and recorded 6th June 1815, in the record of New Madrid county under the description of eight hundred arpents of land situate at Big Portage so called near the northeast fork of the River St. Francis, on the northwest bank thereof and opposite to the mouth of a creek called the bay, being the head or settlement claim of the said Hunot and claimed before the board of land com-

missioners together with the right and privileges of locating the like quantity of land upon any of the public lands of the said Territory, the sale of which is authorized by law (the same tract of land above described having been materially injured by earth-
52 quakes) according to the provisions of the act of Congress entitled "An act for the relief of the inhabitants of the late county of New Madrid in the Missouri Territory who suffered by earthquakes" approved February 17th 1815. The said tract of six hundred and forty acres of land having been materially injured by earthquakes. To have and to hold the said tract of land, premises and privileges above granted unto him the said Rufus Easton, and to his heirs and assigns and to his and their only use, benefit and behoof forever. And the better to enable the said Rufus Easton and his assigns to make a location as aforesaid the said Vandenbenden, for the consideration above mentioned hath and by these presents doth nominate, constitute and appoint the said Rufus Easton his lawful attorney-in-fact to make all such deeds and other writings in his name and behalf as may be necessary to carry into effect the powers herein granted, for the use of him said Rufus Easton, with powers of substituting and appointing one or more attorneys under him with the same authority hereby revoking all formers powers given to any other person. And the said Joseph Vandenbenden for the consideration above mentioned covenants and agrees with him said Rufus Easton, his heirs and assigns that the right and title which the said Joseph Hunot has or ever had to said tract of land above granted is at the time of the delivery of these presents in him the said Joseph Vandenbenden, and that he has not conveyed the same to any person. In all other respects the said Rufus Easton takes the right and title of the said Vandenbenden, to the same at his said Easton'- entire *wish* and hazzard, so that if the tract of land or any part of the same shall not be eventually granted by the United States Government. The said Rufus Easton, his heirs and assigns are not to have any recourse against the
53 said Vandenbenden or his heirs for any part of the consideration money above mentioned or other damages on account of this deed. In testimony whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

J'H VANDEN BENDEN. [SEAL.]

Signed, sealed and delivered in presence of—
ROBERT G. WATSON.
RICHARD T. WATERS.

TERRITORY OF MISSOURI, }
Township of New Madrid. }

Personally appeared before me, a justice of the peace in and for the township aforesaid, the within-named Joseph Vanden Benden and acknowledged the within deed of conveyance to be his own voluntеer act and deed for the purposes therein contained, and that he delivered the same to the said Rufus Easton.

Given under my hand, at New Madrid, the 4th day of November, 1815.

ROBERT G. WATSON, *J. P.*

For and in consideration of nine hundred and sixty dollars to me, the undersigned, Rufus Easton, in hand paid by Robert Simpson, of the town of St. Louis, in the Missouri Territory, I do grant, bargain, sell, and assign to him, the said Robert Simpson, his heirs and assigns, the *the* within-described tract of six hundred and forty acres of land, with the privileges within mentioned, and to warrant the titles to the said tract of lands, to have and to hold unto him, the said Robert Simpson, and to his heirs and assigns forever.

Dated, signed, sealed, and delivered the 4th day of November, 1815.

RUFUS EASTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
ROBERT G. WATSON.
54 RICHARD J. WATERS.

TERRITORY OF MISSOURI, } *ss:*
New Madrid County, }

Personally came before me, a justice of the peace of the township of New Madrid, in the said county of New Madrid, Rufus Easton, and acknowledged that he signed, sealed, and delivered the above conveyance from him to Robert Simpson as his voluntary act and deed for the purposes therein mentioned.

Given under my hand and seal, at New Madrid, this 4th day of November, 1815.

ROB'T G. WATSON, *J. P.*

TERRITORY OF MISSOURI, } *sct:*
County of New Madrid, }

On the 6th day of November, 1815, rec'd for and on the same day recorded the within deed of conveyance in Record Book No. 6, *and* pages 136, 137, 138, and 139, as is attested by Rich'd H. Waters, cl'k C. C., N. M. C.

I also offer in evidence copy of New Madrid certificate No. 161, granting to Joseph Hunot or his legal representatives 480 acres of land on the application of Rufus Easton to relocate the same, dated August 12th, 1816:

New Madrid Certificate 161.

No. 161. OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, *August 12th,* 1816

I certify that a tract of six hundred and forty acres of land at portage of River St. Francis, in the county of New Madrid, which appears from the books of this office to be owned by Joseph Hunot (who has already received certificate No. 37 for 160 acres), has been materially injured by earthquakes, and that in conformity to the

provision of the act of Congress of 17th February, 1815, the
55 said Joseph Hunot or his legal representatives is entitled to locate four hundred and eighty acres, the balance under the limitations of said act of Congress, on any of the public lands of the Territory of Missouri the sale of which is authorized by law.

FREDERICK BATES.

To William Rector, Esquire, surveyor of the lands of the United States for the Territories of Illinois and Missouri:

Take notice that pursuant to the act of Congress entitled An act for the relief of the inhabitants of the late county of New Madrid who suffered by earthquakes, approved February 17th, 1815, I claim the right to locate four hundred and eighty acres of land, mentioned in the certificate to you produced, being issued by the recorder of land titles for said Territory of a tract of six hundred and forty acres of land originally claimed by and confirmed to Joseph Hunot (who has already received certificate for one hundred and sixty acres), which said quantity of land mentioned in said certificate I request you to locate and survey in Howard county, north of Missouri, beginning about one mile north of Elisha Roas' plantation, at a red oak on a dividing ridge between Salt creek and Bonne Temme, and running thence north three hundred and eleven and one-tenth perches; thence west two hundred and twenty-six and five-tenth-perches; thence south three hundred and eleven and one-tenth perches; thence east two hundred and twenty-six and five-tenth-perches to the place of beginning; or if it cannot be located and surveyed as aforesaid, then as follows, to wit: Beginning as aforesaid, thence north sixty-six chains thirty-three links; thence
56 west sixty-six chains thirty-three links; thence south sixty-six chains thirty-three links, and thence east to the place of beginning.

Dated the 4th day of November, 1816.

RUFUS EASTON,
Assignee, Agent and Attorney of Claimant.

Endorsements: Class No. 37. Rec'd into this office the 14th day of November, 1816; withdrawn in consequence of indefinite calls and interferences.

Rufus Easton, as the legal representative of Joseph Hunot, enters four hundred and eighty acres of land by virtue of a certificate, No. 161, dated (August 12th, 1816), issued by Fred'k Bates, Esqr., recorder of land titles, to wit, that part of fractional section seventeen, in township forty-five north and range seven east (the township in which St. Louis is situate), lying north of the Cul-de-sac fields; fractional section eighteen, in the same township, and so much off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity.

St. Louis, June 16th, 1818.

JOSEPH C. BROWN,
For RUFUS EASTON.

STATE OF MISSOURI, OFFICE OF REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of New Madrid certificate No. 161, together with the papers thereto attached, with the endorsements thereon, as the same appear in Record Book 1 of New Madrid certificates and locations now on file in this office.

[SEAL.] In testimony whereof I have hereunto set my hand and
57 affixed the seal of said office, at the city of Jefferson, this 17th day of February, 1879.

JAS. E. McHENRY,
Register of Lands.

Next the record of the recorder of land titles that Joseph Hunot should be granted 640 acres, situate — portage, River St. Francis, county of New Madrid, claiming 800 arpents.

Opinion of Recorder of Land Titles.

Opinion of the recorder of land titles for Missouri Ter'y as to claims entered under act of 13th June, 1812, and proven before 1st Jan'y, 1814, as provided by the act of the 3rd March, 1813, comprehending also the claims in the late district of Arkansas, which by act of 2d Aug., 1813, were permitted to be entered until 1st Jan'y, 1814, and proven until 1st of July, 1814, together with the extensions of quantity provided by 4th sec. of the act of 3rd March, 1813, and confirmation under the act of 12th April, 1814.

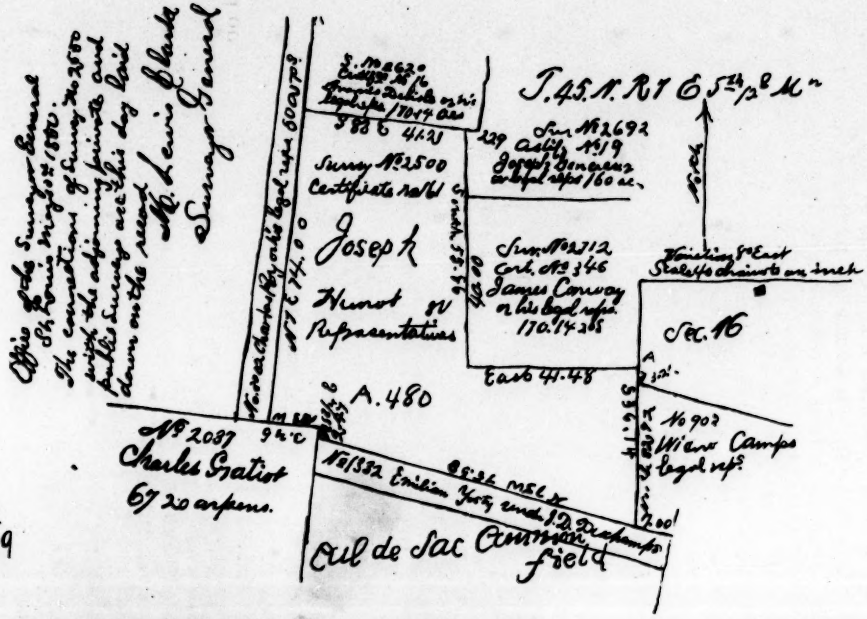
Opinions of the Recorder of Land Titles.

—art or order of survey.	Survey.	Notice to the recorder.	Quantity of land.	Where situated.	Poss., inhab., or cult.	Opinions of the recorder.
—0 June, 1802, by F. Lessieur.	.....	Joseph Hunot ...	800 arpents.	Port'e, R.St. Frs., N. Madrid.	Poss'n, inhab'n, & cult. fr. 1802 to 1808.	Granted 640 acres, E. 275, 5 p. 105, Rep. 168.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
ST. LOUIS, *December 24th*, 1873.

This is to certify that the above is truly copied from page 13 of Book No. 1, except the caption, which is truly copied from page 1
58 of the same book, being one of the five small books, with the following endorsement on the first and also on the fifth book, believed to be in the handwriting of Frederick Bates, to wit: "These five small books are original and in the proper handwriting of the undersigned, being his decisions of land claims since the adjournment of the late board. They were arranged and fairly transcribed for report to the Com'r of the Gen'l Land Office, but not yet recorded in the books, because they have no authority till sanctioned by the Government. St. Louis, Nov. 1st, 1815. Frederick Bates, recorder of land titles;" which book is up to this day on file in this office.

STILLMAN O. FISH, *Recorder.*



No. 937.
Hammond } p. 59
W.
Dns. Co

Also the application of Joseph Easton to locate the deed of June 16th, 1815:

Application of Joseph Easton for Location.

To William Rector, Esquire, surveyor of the lands of the United States for the Territories of Illinois and Missouri:

Take notice that pursuant to the act of Congress entitled An act for the relief of the inhabitants of the late county of New Madrid who suffered by earthquakes, approved February 17th, 1815, I claim the right to locate four hundred and eighty acres of land mentioned in the certificate to you produced, being issued by the recorder of land titles for said Territory of a tract of six hundred and forty acres of land originally claimed by and confirmed to Joseph Hunot (who has already received a certificate for one hundred and sixty acres), which said quantity of land mentioned in said certifi-
59 cate I request you to locate and survey in Howard county, north Missouri, beginning about one mile north of Elisha Roas' plantation, at a red oak on a dividing ridge between Salt creek and Bonne Femme, and running thence north three hundred and eleven and one-tenth perches; thence west two hundred and twenty-six and five-tenth-perches; thence south three hundred and eleven and one-tenth perches; thence east two hundred and twenty-six and five-tenth-perches to the place of beginning; or if it cannot be located and surveyed as aforesaid, then as follows, to wit: Beginning as aforesaid, thence north sixty-six chains thirty-three links; thence west sixty-six chains and thirty-three links; thence south sixty-six chains thirty-three links, and thence east to the place of beginning.

Dated the 4th day of November, 1816.

RUFUS EASTON,
Assignee, Agent and Attorney of Claimant.

Also a copy of survey No. 2500 from the surveyor general's office of the United States, certificate No. 161, to Joseph Hunot or his legal representatives, dated June 23rd, 1819.

(Here follows diagram marked p. 59.)

DIAGRAM OF SURVEY No. 2500.

60 *Survey No.* 2500. *Certificate No.* 161.

Surveyed for Joseph Hunot or his legal representatives 480 acres, located by virtue of a New Madrid certificate, beginning at Conway's S. E. corner-stone, in the west boundary of the 16th section, T. 45 north, range 7 east; thence south 36 ch's 14 l'ks to E. Yosty's line 7 ch. northwardly of his corner on Chouteau; thence with Yosty's line, N. 75 W. 75 ch. 38 l'ks to corner of Gratiot's line; thence N. 8¾° E. with Gratiot's 2 ch. 47 l'ks, the old corner-stone of his bigger tract; thence N. 83° W. 13 ch. 46 l'ks, a stone, the S. E. corner of Hebert's claim; thence N. 7 E. 74 ch. to Delisle's

corner-stone; thence S. 83 E. 41 ch. 21 l'ks, a stone, Genereux' corner; thence with his and Conway's line south 55 ch's 86 l'ks to Conway's S. W. corner-stone; thence east 41 ch's 48 l'ks to the beginning.

June 23rd, 1819.

JOS. C. BROWN, *D. S.*

STATE OF MISSOURI:

OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of the plat of survey No. 2500, together with the field-notes thereof, as the same appear of record in Book A of New Madrid surveys, now on file in this office.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed the seal of said office, at the city of Jefferson, this 21st day of February, 1879.

JAS. E. McHENRY,
Register of Lands.

Also copy from the office of the recorder of land titles of the United States survey No. 2500 to Joseph Hunot or his legal representatives as returned to the recorder January 8th, 1833.

61 (Here follows diagram marked p. 61.)

SURVEY 2500. CERTIFICATE 161.

Survey No. 2500. *Certificate No.* 161.

Surveyed for Joseph Hunot or his legal representatives 480 acres, located by virtue of a New Madrid certificate, beginning at Conway's S. E. corner-stone, in the west boundary of the sixteenth section, T. 45 N., R. 7 E.; thence south 36 chains 14 links to E. Yosty's line, 7 chains westwardly of his corner on Charteau; thence with Yosty's line N. 75 W. 75 ch's 38 links to corner of Gratiot's line; thence N. 8¾ E. with Gratiot's 2 ch's 74 l'ks, the old corner-stone of his *begin* tract; thence N. 83 W. 13 ch's 46 l'ks, a stone, the S. E. corner of Hebert's claim; thence N. 7 E. 74 chains to Delisle's corner-stone; thence S. 83 E. 41 ch's 21 l'ks, a stone, Genereaux' corner; thence with his and Conway's line south 55 ch's 86 l'ks to Conway's southwest corner-stone; thence east 41 ch's 48 l'ks to the beginning.

June 23rd, 1819.

JOSEPH C. BROWN, *D. S.*

Recorded on the 2nd of February, 1833.

F. R. CONWAY,
62 *Recorder Land Titles.*

No. 994.
Hammond's Lot
Dns. Co.

SURVEYOR'S OFFICE, ST. LOUIS, *8th January*, 1833.

I, Elias T. Langham, surveyor of the public lands in the States of Illinois and Missouri, certify that the above is a true copy of the plat and survey of four hundred and eighty acres of land surveyed for Joseph Hunot or his legal representatives in townships No. 45 north of the base line, range No. 7 east of the fifth principal meridian, as the- are recorded in my office in pages 84 and 85 of Record Book A, containing plats and surveys of New Madrid locations.

E. T. LANGHAM.

To F. R. Conway, Esq., recorder of land titles for the State of Missouri.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
ST. LOUIS, *December 24th*, 1873.

This is to certify that the foregoing is a true and correct copy of survey No. 2500 as the same appears of record on page 8 of a book marked "Record Book G," which book is up to this day on file in this office.

STILLMAN O. FISH, *Recorder*.

Also act of Congress, June 30th, 1864, granting Joseph Hunot or his legal representatives all the land in United States survey No. 2500. See U. S. Statutes at Large, vol. 13, p. 581.

Also copy of warranty deed from Rufus Easton and wife to Samuel Hammond, dated September 29th, 1823; acknowledged October 9th, 1823; recorded February 9th, 1824, in St. Louis county,
63 conveying all the survey except 234 acres, as per deed recorded in St. Louis county.

Deed from R. Easton to S. Hammond.

This deed, made this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and twenty-three, between Rufus Easton of the town of St. Charles, in the State of Missouri, and Abial his wife, of the first part, and Samuel Hammond of the county of Jefferson, in the said State, of the second part witnesseth: That the said Rufus Easton and wife for and in consideration of the sum of fifteen hundred and eighty-three dollars, to him in hand paid by the said Samuel Hammond, and pursuant to the conditions of a certain bond executed by the said Rufus Easton to the said Samuel Hammond, and James I. Wilkinson, dated 3rd September, 1818, they the said Rufus Easton and wife, have granted, bargained and sold, and by these presents do grant, bargain and sell, convey and confirm, unto the said Samuel Hammond, and to his heirs and assigns forever, two hundred and forty acres of land, and the whole of the following tract, except two hundred and thirty-four acres of land of the said tract conveyed to William H. Ashley, as will appear by deed of 1819, recorded in the recorder's office of St. Louis county, to wit: Four hundred and eighty acres of land described in the following entry: Rufus Easton, as the legal representative of

Joseph Hunot enters four hundred and eighty acres of land by virtue of a certificate No. 161, issued by Frederick Bates, Esquire, recorder of land titles, to wit: That part of fractional section seventeen in township forty-five north, and range seventeen west (the township in which St. Louis is situated) lying north of the Cul-de-sac fields, fractional section eighteen in the same township
64 and so much off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity, which entry is dated, St. Louis June 16th 1818, and signed Joseph C. Brown for Rufus Easton. To have and to hold the above described and granted premises, being two hundred and forty acres of land hereby conveyed together with the appurtenances unto him the said Samuel Hammond and to his heirs and assigns forever; and for the consideration above mentioned, the said Rufus Easton doth covenant and agree with the said Samuel Hammond his heirs and assigns the title to the above-granted two hundred and forty acres of land he will forever warrant and defend unto the said Samuel Hammond his heirs and assigns against the claims and demands of all persons whomsoever.

In witness whereof the said Rufus Easton and wife do hereunto set their hands and seals the day and year first above written.

RUFUS EASTON. [SEAL.]
ABIAL EASTON. [SEAL.]

Signed, sealed, and delivered in presence of Robert Simpson.
GUSTAVUS A. HAMLIN.

STATE OF MISSOURI, } ss:
County of St. Louis, }

This day personally appeared before me, the clerk of the circuit court for the county of St. Louis, the within-named Rufus Easton and Abial, his wife, who are personally known to me as the grantors in the within deed, and acknowledged the same to be their acts and deeds, hands and seals for the purposes therein mentioned; and the said Abial Easton, being by me examined separately and apart from her said husband, acknowledged that she executed the same freely and voluntarily and without the compulsion or undue influence of her husband.

65 Given under my hand and seal of office, at St. Louis, this ninth day of October, eighteen hundred and twenty-three.

[SEAL.]

ARCHIBALD GAMBLE, *Clerk.*

Recorded February 9th, 1824.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

OFFICE OF RECORDER OF DEEDS.

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of an instrument in writing executed by Rufus Easton and wife to Samuel Hammond, together with the acknowledgment

and date of filing and recording thereof, as fully as the same remains of record in my office, in Book L, page 489.

[SEAL.] Witness my hand and official seal this 30th day of March, 1880.

C. W. IRWIN, *Recorder.*

Everything is considered objected to on either side, by consent of counsel, to which objection is desired to be made in the final presentation of the case.

In the deed of September 29th, 1823, last introduced, it is admitted that where it speaks of Ashley it should have been Stokes, which it is admitted is a clerical error. It is also admitted that there is an error in the township, but that the description is sufficient to cover this land in controversy in this suit.

It is agreed between the parties that the depositions taken in sundry cases proving heirship of the plaintiffs and their residence in the so-called Confederate States during the war, taken in 66 other cases in controversy, may be used in this case with the same force and effect as if taken in this case.

The depositions of the following-named witnesses were offered: Andrew J. Hammond, Joseph S. McKie, James H. Washington, Susan Briquet, C. Briquet, Augusta Barsh, William F. Barsh, Mary A. Kingman, and all the testimony of Samuel E. Hammond taken in the case of Hammond *vs.* Coleman.

Deposition of Andrew J. Hammond.

ANDREW J. HAMMOND, of lawful age, being produced, sworn, and examined on the part of plaintiff, deposeth and saith:

Q. What is your name and age?

A. Andrew J. Hammond; age, sixty years.

Q. Where do you reside? How far is it from this place and how long have you resided there?

A. I reside in Aiken county, South Carolina, formerly Edgefield county, five miles from this place. Have resided there or its vicinity all my life.

Q. Do you own any land; if so, how much?

A. I own fifteen hundred or more acres of land.

Q. Did you hold any public office before the last war; and, if so, what?

A. I was a member of the legislature of South Carolina and a captain in the militia of that State.

Q. Did you ever know a man named Samuel Hammond?

A. I did.

Q. When did he die and where?

A. Don't recollect exactly; about twenty-five years ago. He died on his place called Varillo, near Augusta, Ga., in South Carolina.

Q. Was he any relative of yours?

A. Yes; he was second cousin.

Q. Tell whatever you know of the man, both by family report and of your own knowledge.

67 A. Samuel Hammond, the man of whom I am speaking, was born in Virginia. He was a soldier in the revolutionary war, where he greatly distinguished himself in many battles, first as captain and afterwards as colonel. He was once a member of Congress from Georgia and afterwards appointed to some public office in what is now the State of Missouri; I believe territorial governor. He resided some years in Missouri, and on his return to South Carolina I was a boy about ten years of age and living near him; was intimate with him and family until his death. He was secretary of state of South Carolina for some years after his return from Missouri.

Q. Who did his family consist of?

A. His wife, who died before him, and children, namely, Charles was the eldest; Samuel, I believe, was the second; Ellen, the wife of Samuel Kingman, was, I believe, the third, and Abner L., I think, the fourth; Mary Ann Washington, wife of James H. Washington, and John was the youngest.

Q. Did Charles marry; and, if so, who?

A. He married Miss Reynolds.

Q. Is he living?

A. I think not.

Q. Did he leave any family?

A. He left a wife, but I think no children.

Q. Did Samuel Hammond, the son of said Samuel Hammond, marry?

A. He married Miss Lark.

Q. What became of Samuel Hammond, Jr.?

A. He removed some years ago to Alabama, near Tolladega, I think.

Q. Is Ellen Kingman, wife of Samuel Kingman, living?

A. No, sir.

Q. About what year did she die and when?

A. I think she died before the war, but do not know when.

Q. Did she leave any children?

A. Yes, sir.

Q. Please name them.

68 A. Mary, Anna, Emma, and Julia. There was a son whose name I do not recollect and who has died since the war.

Q. Was this son married?

A. No, sir.

Q. Are any of these young ladies married; and, if so, to whom?

A. Anna married Joseph S. McKie, my son-in-law.

Q. From family report or from your own knowledge do you know or believe that all of these children of Ellen Kingman were in the so-called Confederate States during the whole period of the last war?

A. I think so beyond a doubt.

Q. Is Samuel Kingman, husband of the said Ellen Kingman, living?

A. No, sir.

Q. About what year did he die?

A. He died about 2 years ago.

Q. Did he marry again after the death of his wife, Ellen?

A. Yes, sir.

Q. Did he leave any children by his second wife?

A. He did.

Q. Do you know if any of these children were born before the death of the son of Samuel Kingman of which you have spoken?

A. Yes, sir; I believe they all were.

Q. Where are the children of Samuel and Ellen Kingman living?

A. Three of them are living in Edgefield county and one in Aiken county, South Carolina, near this place.

Q. Did Abner L. Hammond, son of Samuel Hammond, marry?

A. Yes, sir.

Q. Is he living?

A. No, sir.

—. Can you recollect about when he died?

A. He died within a year or two.

Q. Do you know where he lived before he died?

A. He lived in Charleston, South Carolina, many years;
69 I think he died in Macon, Ga., at his sister's house.

Q. From family report or from your own knowledge do you know or believe that the said Abner L. Hammond was in the so-called Confederate States during the whole period of the last war?

A. I think so; have no doubt of it.

Q. Did said Abner L. Hammond leave any family?

A. Yes, sir; he left several children.

Q. Is James H. Washington, husband of Mary Ann Washington, who was daughter of Samuel Hammond, living?

A. No, sir; he died after the war.

Q. Where is his widow living?

A. At Macon, Georgia.

Q. From family report or your own knowledge do you know or believe if the said James H. Washington and Mary Ann, his wife, were in the so-called Confederate States during the whole period of the last war?

A. I believe they were; I don't think they ever left the Confederate States.

Q. Did John Hammond, the son of the said Samuel Hammond, marry?

A. Yes, sir; he married Miss Susan Richardson.

Q. Is he living?

A. He is not living.

Q. Do you know if he left any children?

A. Yes; but I don't know how many or whether they *or* living or not.

Q. Do you know if his widow married again?

A. I think she did, but I cannot say.

Q. Have you any interest in this suit?
A. None whatever.

ANDREW J. HAMMOND.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] JAMES C. C. BLACK,
Notary Public, Richmond Co., Georgia.

70 *Deposition of Joseph S. McKie.*

JOSEPH S. MCKIE, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. What is your name and age and where do you reside?
A. My name is Joseph S. McKie; age thirty-two years, and reside in Edgefield, South Carolina, nineteen miles from this place.
Q. How long have you resided at your present place or its vicinity?
A. All my life within a mile of where I now live.
Q. Do you own any land; and, if so, how much?
A. I do; about a thousand acres.
Q. Are you married? And, if more than once, state the name of each wife and her family.
A. My first wife was Lucy S. Hammond, daughter of Andrew J. Hammond; my second wife was Anna W. Kingman, daughter of Samuel and Ellen Kingman, of Charleston, South Carolina.
Q. Where and when did you marry Miss Kingman, and by whom were you married?
A. We were married 18th of December, 1873, at Hardy's Baptist church, in Edgefield county, South Carolina, by Rev. John P. Mealing.
Q. Do you know if Mr. Samuel Kingman is living?
A. He is dead and died about two years ago.
Q. Where did Mr. Samuel Kingman die?
A. He died in Charleston, South Carolina.

J. S. MCKIE.

Subscribed and sworn to before me on this day, at the place and within the hours first aforesaid, this 28th day of December, 1874.

[SEAL.] JAMES C. C. BLACK,
Notary Public, Richmond County, Georgia.

71 *Deposition of James H. Washington.*

JAMES H. WASHINGTON, of lawful age, produced, sworn, and examined on the part of plaintiffs, deposeth and saith:

Q. What is your name and age?
A. James H. Washington; age, thirty-four years.
Q. What is the name of your father and mother?
A. My father's name was James H. R. Washington; my mother's name is Mary Ann Washington.

Q. Is your father living?
A. He is not.
Q. When and where did he die?
A. He died in Macon, Georgia, in 1867.
Q. Where is your mother now living?
A. In Macon, Georgia.
Q. What was the name of the father and mother of your mother?
A. Samuel Hammond and Eliza Amelia Hammond.
Q. Where were they married?
A. They were married at the residence of Colonel Goodwin, called Mattock, in South Carolina, in 1802.
Q. Where was your mother born?
A. She was born in Bellvale, the name of my grandfather's country seat, some miles from Herculaneum, in the State of Missouri, as it is now.
Q. Did your grandfather and family live in any other part of what is now Missouri?
A. They lived in St. Louis and some other places.
Q. Did your grandfather die in Missouri?
A. No, sir; he died in South Carolina, in Edgefield district, not far from Augusta, from which place he was buried with military honors as a revolutionary officer.
Q. Where were you and your mother during the whole of the late war?
A. We were in Macon, Georgia, during the whole of the
72 war.
Q. In what year did your grandfather and family return from Missouri to South Carolina?
A. In 1824.

J. H. WASHINGTON.

Subscribed and sworn to before me on this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

JAMES C. C. BLACK,
Notary Public, Richmond County, Georgia.

Deposition of Susan Briquet.

SUSAN BRIQUET, of lawful age, being produced, sworn, and examined on the part of plaintiffs, deposeth and saith:

Q. What is your name and age and where do you live?
A. My name is Susan Briquet; age, fifty-five years, and live at Langly, Aiken county, South Carolina, eight miles from this place.
Q. If married, state the name of your husband.
A. Claudius Briquet.
Q. Have you any children by him? If so, state their names.
A. One child only, Laura Virginia Briquet.
Q. Is your daughter of age?
A. No; she is a minor.
Q. Have you ever been married before? And, if so, state the name of your first husband and your own name before marriage.

A. The name of my first husband was John O'Keefe Hammond and my name before marriage was Susan Richardson.

Q. Did you have any children by your first husband?

A. Yes, sir.

Q. Were any of these children living when you married your second husband? If so, give their names.

A. Only two were living; Charles L. Hammond and Francis A. Hammond.

Q. Are those children now living?

73 A. No, sir; they are dead.

Q. What years did they die?

A. Charles L. Hammond, my son, died 30th of June, 1862, unmarried, and my daughter Francis died September 16th, 1867.

Q. Did both of these children die before or after the birth of your child by your second husband?

A. They both died after.

Q. After the commencement of the last war was your son in the so-called Confederate States until his death?

A. He was.

Q. Was your daughter Francis A. Hammond, your daughter Laura Virginia Briquet, and yourself living together during the last war?

A. Yes, sir; we were.

Q. Where were you living?

A. In Augusta, Georgia, all the time.

Q. Where was your son at the commencement of the last war?

A. In Charleston, South Carolina.

Q. Did he remain there until his death?

A. No; he went to Richmond and died there.

Q. Where was your first husband born?

A. In Herculaneum, Missouri.

Q. When did he die?

A. He died January 1st, 1855.

Q. What was the name of his father and mother?

A. His father was named Samuel Hammond and his mother Eliza Amelia.

Q. Did they live in any other part of Missouri?

A. They lived in St. Louis.

Q. Did his father, Samuel Hammond, die in Missouri?

A. No; he died about seven miles from this place, in South Carolina.

Q. Did your first husband, John O'Keefe Hammond, have any brothers and sisters? If so, state their names; and, if married, state whom they married.

74 A. Charles Hammond, the oldest, married Sarah Ann Reynolds, Ellen Hammond married Samuel Kingman, Samuel Hammond married Ellen Lark, Abner L. Hammond married Catharine Barsh, Mary Ann Hammond married James Washington.

Q. Is Charles Hammond living?

A. No, sir.

Q. Did he die before or after his father?

A. He died before his father.
Q. Did he leave any children?
A. He did not leave any.
Q. Is Abner L. Hammond living?
A. No, sir.
Q. Did he leave any children? If so, name them.
A. He left three when he died; Mrs. Augusta G. Barsh, who is here present; Mrs. Catharine V. Price, and David L. Hammond.
Q. Do you know whether Mr. Samuel Kingman, the brother-in-law of your first husband, is living?
A. No, sir; he is not.
Q. Were any of the children by your first husband married?
A. No, sir; none of them.
Q. In what year were you married to your first husband?
A. August 7th, 1840.

SUSAN BRIQUET.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid this 29th day of December, 1874.

[SEAL.] JAMES C. C. BLACK,
Notary Public, Richmond County, Ga.

Deposition of Claudius Briquet.

CLAUDIUS BRIQUET, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. What is your name and age?
A. Claudius Briquet; sixty years of age.
Q. Where do you live?
A. At Langley, Aiken Co., South Carolina.
75 Q. Are you married?
A. I am; the lady present is my wife. Her name is Susan Briquet.
Q. When were you married?
A. March 30th, 1858.
Q. When you married her was she a single woman or a widow?
A. She was the widow of John O'Keefe Hammond.
Q. Did she have any children by her first husband when you married her?
A. She had two, Frances and Charles.
Q. Has she any children by yourself?
A. One; Laura Virginia Briquet.
Q. Are the children by her first husband living?
A. No, sir; they are both dead.
Q. Did they die before or after the birth of your daughter Laura Virginia?
A. After her birth.
Q. Were either of them married?
A. No, sir.

CLAUDIUS BRIQUET.

Subscribed and sworn to before me on this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

[SEAL.] JAMES C. C. BLACK,
Notary Public, Richmond County, Georgia.

Deposition of Augusta G. Barsh.

AUGUSTA G. BARSH, of lawful age, being produced, sworn, and examined on the part of plaintiffs, deposeth and saith:

Q. What is your name and, if married, the name of your husband and your age?

A. My name is Augusta G. Barsh; my husband's name is William F. Barsh; my age is thirty-three years.

Q. Where were you married?

A. In Charleston, South Carolina, where I lived.

Q. Where do you now reside?

A. At Langley, Aiken county, South Carolina.

76 Q. When did you move from Charleston?

A. In August, 1874.

Q. Have you any brothers and sisters? If so, state their names.

A. Mrs. Catharine V. Price, wife of Thomas M. Price, and David L. Hammond.

Q. Where do they live?

A. In Charleston, South Carolina.

Q. What was the name of your father and mother?

A. Abner L. Hammond and Catharine.

Q. Where was your father born?

A. In Missouri; St. Louis, I think.

Q. What was the name of his father and mother?

A. Samuel Hammond and Eliza Amelia.

Q. Is your grandfather, Samuel Hammond, living?

A. No, sir.

Q. Where did he die?

A. At Varillo, near Augusta, Georgia.

Q. What kind of a place was Varillo?

A. The name given to his farm a few miles from Augusta, in South Carolina.

Q. Are your mother and father living?

A. They are both dead.

Q. About what year did your mother die, and where?

A. At Charleston, South Carolina, near 1870.

Q. What year did your father die and where?

A. In July, 1872, at Macon, Georgia, in the house of his sister, Mrs. Mary Ann Washington.

Q. Where were you living during the last war?

A. In Charleston, South Carolina.

Q. Where was your father during the late war?

A. Either in South Carolina or Virginia during the whole of the war, and perhaps a little while in Macon, Georgia.

Q. In what part of Virginia?

A. In Richmond and Petersburg.

Q. Did your father have any brothers and sisters? If so
77 name them.

A. Yes; Charles, Ellen, Samuel, Mary Ann, and John O'Keefe Hammond.

Q. From family report, can you tell when and where your parents were married?

A. They were married in Columbia, South Carolina, by Rev. Peter Shaw; I believe in the year 1832.

AUGUSTA G. BARSH.

Subscribed and sworn to before me on this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

[SEAL.] JAMES C. C. BLACK,
Notary Public, Richmond County, Georgia.

Deposition of William F. Barsh.

WILLIAM F. BARSH, of lawful age, being produced, sworn, and examined on the part of plaintiffs, deposeth and saith:

Q. What is your name and age, and where do you reside?

A. My name is William F. Barsh; age, thirty-five years, and reside at Langley, Aiken Co., South Carolina.

Q. If you are married state the name of your wife and when and where you were married.

A. My wife's name was Augusta G. Hammond. We were married 21st of January, 1873, at Charleston, South Carolina, where she resided.

Q. What was your wife's father's name?

A. His name was Abner S. Hammond.

Q. After your marriage where did you reside?

A. At Ridgeville, South Carolina, for three or four months, and then in Charleston, South Carolina, until August of this year.

WILLIAM F. BARSH.

Subscribed and sworn to before me this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

[SEAL.] JAMES C. C. BLACK,
78 *Notary Public, Richmond County, Georgia.*

Deposition of Mary A. Kingman.

MARY A. KINGMAN, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. What is your name and where do you reside?

A. My name is Mary A. Kingman, and I reside in Aiken county, South Carolina.

Q. Are you over twenty-one years of age?

A. I am.

Q. What is the name of your father and mother, and when and where were they married?

A. My father's name was Samuel Kingman. My mother's name was Margaret Ellen, but she was most always called Ellen. I believe they were married in 1836. They were married at the residence of my grandfather, Samuel Hammond, at Varillo, South Carolina, a few miles from this place.

Q. Are your parents living?

A. They are both dead.

Q. When did your mother die, and where?

A. In Charleston, South Carolina, in 1853.

Q. Did she leave any children besides yourself? If so, state their names.

A. She left Samuel Hammond Kingman, Margaret Ellen Kingman, Anna W. Kingman, Emma W. Kingman, Julia S. Kingman, and James McC. Kingman.

Q. Is James McC. Kingman living?

A. No.

Q. When did he die?

A. In 1853—same year my mother died.

Q. Is your father living?

A. He is not.

Q. When and where did he die?

A. In Charleston, South Carolina, in 1871.

Q. Did he marry again after the death of your mother?

A. He did.

Q. Did he have any children by his second marriage? If so, name them.

79

A. He had several—Susan B. Kingman, Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman.

Q. Is Margaret Ellen Kingman, your sister, living?

A. She is not.

Q. When did she die?

A. I do not remember the exact date, but it was after the birth of the first child and before the birth of the second child of my father by his second marriage.

Q. Is Susan B. Kingman, the eldest child of your father by his second marriage, living?

A. No, sir. She died at the age of a few months, just before the death of my sister Margaret Ellen Kingman.

Q. Is your brother Samuel Hammond Kingman living?

A. He is not.

Q. When did he die, and was he married?

A. He died in 1871, and unmarried.

Q. Were all the children of your father by his second marriage born before the death of your brother Samuel Hammond Kingman?

A. They were.

Q. Are any of these children of age?

A. No, sir; they are all minors.

Q. When did your father marry a second wife?

A. In Sept., 1854.

Q. When did your father die and where?

A. In September, 1871, in Charleston, South Carolina.

Q. Where did you, your brothers and sisters, and half brothers and sisters reside during the war?

A. We all resided either in Charleston or Columbia, South Carolina, during the whole of the war.

80 Q. Where did your father reside during the war?

A. With his children all the time either in Charleston or Columbia.

Q. What was the name of the father and mother of your mother?

A. Samuel Hammond and Eliza Amelia Hammond.

Q. Where was your mother born?

A. In St. Louis, Missouri.

Q. Were her parents living at St. Louis, Missouri, at the time?

A. They were.

Q. Did your grandfather die in Missouri?

A. He did not; he died at Varillo, South Carolina, a few miles from here.

Q. Did your mother have any brothers and sisters? If so, name them.

A. Yes; Charles, Samuel, Abner L., Mary Ann, wife of James H. Washington, and John O'Keefe Hammond.

Q. Are any of your sisters married; and, if so, who?

A. One of them, Anna W. Kingman, who married Joseph S. McKie.

MARY A. KINGMAN.

Subscribed and sworn to before me on this day, at the place and within the hours first aforesaid, this 30th day of December, 1874.

[SEAL.] JAMES C. C. BLACK,
Notary Public, Richmond County, Georgia.

Deposition of Samuel E. Hammond.

SAMUEL E. HAMMOND, sworn and examined on the part of plaintiff, testified as follows:

Direct examination.

By Mr. JEWETT:

Q. What is your name?

A. My name is Samuel E. Hammond.

Q. Your age?

A. Thirty-nine on the 19th of next May.

Q. Where were you born?

A. Edgefield, South Carolina, three miles from Hamburg.

81 Q. What is the name of your father?

A. Samuel Elbert Hammond.

Q. What was the name of his father?

A. Samuel Hammond.

Q. Where was your father born?

A. My father was born in just I don't know what place; I think

somewhere within about within twelve miles of Cape Girardeau; I am not certain about that, though.

Q. In the southern part of the State?

A. Yes, sir.

Q. Whose grandson did you say you are?

A. Samuel Hammond's, known as Col. Samuel Hammond.

Q. Did he ever live in the State of Missouri?

A. Yes, sir.

By Mr. HILL:

Q. Of your own knowledge do you know anything of this?

A. I don't know only from the facts what I have heard.

Q. According to the accounts from your family?

Mr. HILL: That won't do.

Q. Where did your grandfather die?

A. He died, I think, within three miles of Hamburg, Edgefield, South Carolina.

Q. Do you know the name of his country-seat from your family history?

A. I do not, only on — island, three miles below Hamburg on the river.

Q. Three miles from Augusta?

A. Yes; on the South Carolina side.

Q. How many children did your father leave at his death?

A. He left at his death nine.

Q. How many of them are alive now?

A. Three.

Q. What are their names?

A. My brother Charles L. and sister Sarah G. and myself.

82 Q. The other six are dead?

A. Yes, sir.

Q. Were they married or unmarried?

A. All unmarried.

Q. Leaving no issue, either of them?

A. No, sir.

The COURT: When did your father die?

A. My father died in 1849; I think the 20th of May, if I mistake not.

Q. The children died sin-e your father?

A. All died the next year, or at least within a year or two; four of them died—there was five of them died, I believe, the next year, all within three weeks of one another. I had a brother died—the oldest brother died in Arkansas in 1857; another brother killed in the army in Virginia.

Q. There are but three of you left of that branch of the Hammond family?

A. That is all.

Q. Sarah G. Hammond?

A. Yes.

Q. Charles L. Hammond?

A. Yes.

Q. And Samuel E. Hammond?
A. Yes.
Q. They are the only surviving children of Samuel E. Hammond, your father?
A. Yes.

Mr. HILL:

Q. Sam-el L. Hammond your father?
A. No; Samuel E.

Mr. MORRISON: I would suggest to the counsel on the other side that this witness is here from Arkansas and he may want to return home again, and that we be permitted to ask, with the consent of counsel, where he and his brother resided during the late civil war, and that the witness may go home if he chooses.
Mr. HILL: Subject to our objection.
The COURT: That testimony can be taken in a certain sense provisionally.

83 Q. State, if you know, where your sister and your brother, Charles L. Hammond, resided, and state where you resided during the late civil war in the United States.

The COURT: It is understood that you object to the relevancy of this testimony?
Mr. HILL: Its competency and relevancy both.
The COURT: I will take it subject to both.
Mr. MORRISON: Its competency depends on the future?
The COURT: Yes; it is provisional.

A. My sister resided at Saledego, Alabama, on the old homestead during the war; my brother went from there in the army.
Q. What army?
A. The Confederate army; the Virginia army. I went from Memphis in the war and was in it for a year; came back and was in the neighborhood of Memphis the balance of the time, and in North Mississippi, Marshall county.
Q. Were you in the Confederate army?
A. Yes, sir.
Q. What time during the war?
A. Three years, the first three years; got discharged; got back home in the neighborhood of Memphis; part of the time in Marshall county.
Q. Were you in the United States as distinguished from the Confederate States any time after the commencement of the civil war till after its termination?
A. I was in no other State except Tennessee and Mississippi when I came back, of course. Tennessee was considered one of the Confederate States.
The COURT: He can state the years he was in Tennessee, and that it was occupied by the United States Government forces.
A. They were in Memphis.
Q. Were you in the lines?

84 A. No, sir; I was not, only once; they carried me in the lines.

Q. I mean living, residing.

A. No, sir.

Mr. MORRISON: Carried you in the lines as prisoner, did they?

A. Yes—that is, in 1864 on the fall of Richmond.

Mr. JEWETT: Then what time he was in Memphis he was in the Confederate service?

WITNESS: I was not in Memphis at all.

Q. Near Memphis?

A. No, sir; after I came back from Alabama I was near Memphis.

Q. After you left the army?

A. Yes; within six miles of Memphis and outside of the lines.

Q. Outside of the United States lines?

A. Yes, sir.

Q. Within the Confederate lines, as they claim?

A. I was outside of the United States lines.

The COURT: What time did you say you returned to the vicinity of Memphis?

A. It was in the summer, I think; July or August, 1864.

Q. Previous to that time from 1861 were you in the army?

A. I was in the western army division, Tennessee regiment.

Q. From that time to 1864?

A. From the time I left the army you mean?

COUNSEL: Yes, sir.

A. I first went back to Marshall county, Mississippi, which is the northern line, just 32 miles from Memphis. I had a little farm there, and staid six or nine months and then went back to Memphis and remained there till the surrender.

Q. In saying you were outside of the line of the United States Army do you mean you were in the Confederate lines?

A. Well, I don't know, sir; sort of between the two pickets; both went backward and forward.

85 Q. Through that same region?

A. Yes, sir.

Q. During that period?

A. Yes; I was six miles outside of the picket line of Memphis

Q. Memphis was the picket line?

A. Yes; the Federal line.

Q. Connected with that post?

A. Yes, sir.

Mr. MORRISON: You were six miles south of the Federal picket line?

Mr. HILL: Outside.

Q. I mean north or south side?

WITNESS: I was southeast of Memphis.

Q. You were the south side of the picket line?

A. Yes, sir; south side.

Cross-examination:

By Mr. HILL: We will ask him what years he was in the Confederate army?

A. In 1861, '2, 3, sir.

Q. Of your own personal knowledge, do you know where your sister was at that time?

A. Yes; only from letters I received from her. She was living with my mother, living on the homestead.

Q. You never saw her during those years in South Carolina?

A. No, sir; I did not.

Q. How long before that had you seen her?

A. I was at home in 1857, in December. I left home the last time, I think, about the 15th of December.

Q. Do you know, of your own knowledge, where your brother Charles was during the war?

A. Just only I received letters from him when he was in the army.

Q. Did you see him?

A. No, sir; I did not because he was in the Virginia army and I in the Western army.

86 Q. So you have no personal knowledge—you never saw him in the Virginia army?

A. No, sir; I didn't see him, but received letters from him during the time.

Redirect examination:

By Mr. ——: Where does your sister live now?

A. She lives with me and has ever since.

Q. How long?

A. Ever since 1865, with the exception of one year; she came to me shortly after the surrender.

Q. What time in 1865?

A. I think in September or October; I am not positive which.

I certify that the foregoing is a true and faithful transcript of my short-hand notes of the testimony of Samuel Hammond, taken by me in the trial of the cause of Hammond *vs.* Coleman January 12th, 1875.

L. L. WALBRIDGE,
Stenographer.

Also deed from Claudius Briquet and wife to Edward C. Smith, dated March 7th, 1874, acknowledged the same day and recorded June 3rd, 1874.

Deed from C. Briquet and Wife to E. C. Smith.

This indenture, made this seventh day of March A. D. one thousand eight hundred and seventy-four, by and between Claudius Briquet and Susan Briquet his wife, of the county of Aiken and

State of South Carolina parties of the first part, (the said Susan Briquet was formerly Susan Hammond, the widow of John O'K. Hammond) and Edward C. Smith of the county of St. Louis
87 and State of Missouri, party of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of seven thousand and fifty dollars ($7,050) have granted bargained and sold and do by these presents grant, bargain and sell to the said party of the second part his heirs and assigns forever, all of their and each of their right title and interest claim and demand both of fee and of dower, in and to the land and real estate known as United States survey number two thousand five hundred (2500) situate and lying in the county of St. Louis and State of Missouri—part of this purchase-money, viz., fifty dollars has been paid to the said parties of the first part by the said party of the second part and the receipt whereof is hereby acknowledged, the remainder viz., seven thousand dollars is to be paid to the said Susan Briquett or her legal representatives as soon as the said party of the second part or his assigns obtain possession of any part of the before-described land by virtue of this deed, it now being in possession or occupation of unknown parties holding adversely to her. To have and to hold to the said party of the second part his heirs and assigns forever, together with all hereditaments and appurtenances thereunto belonging. In witness whereof the said parties of the first part have hereunto set their hands and seals at the city of Augusta and State of Georgia the day and year first above written.

C. BRIQUET. [SEAL.]
SUSAN BRIQUET. [SEAL.]
EDW'D C. SMITH. [SEAL.]

STATE OF GEORGIA, } ss:
County of Richmond, }

Be it remembered that on this seventh day of March, A. D. 1874, before me, David D. Macmurphy, clerk of the superior court of said county, the same being a court of record, personally came Claudius Briquet and Susan Briquet, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Susan Briquet, being by me first made acquainted with the contents of said instrument upon an examination separate and apart from her husband, acknowledged that she executed the same and relinquished her fee and also her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court, at Augusta, in said county and State, the day and year first above written.

The words "before me" interlined before signing.

D. D. MACMURPHY,
[SEAL.] *Clerk of Superior Court, R. C., Ga.*

STATE OF MISSOURI, } 88:
County of St. Louis, }

I, the undersigned, recorder of said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd at 10.40 o'clock a. m., 1874, and is truly recorded in Book 496, page 449.

Witness my hand and official seal the date last aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

Also, deed of Edward C. Smith to James L. D. Morrison, dated May 20th, 1874, recorded June 3d, 1874.

88 *Deed.*

E. C. Smith
to
J. L. D. Morrison.

This indenture made this twentieth day of May A. D. one thousand eight hundred and seventy-four by and between Edward C. Smith of the city of St. Louis & State of Missouri, party of the first part and James L. D. Morrison of the same place party of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of five hundred and sixty dollars ($560), to him in hand paid and the receipt of which is hereby acknowledged, and also for other considerations, hath bargained sold conveyed and quitclaimed and doth by these presents, bargain sell convey and quitclaim to the said party of the second part all of his right title and interest in United States survey number two thousand five hundred (2500) which was acquired by him by deed of Claudius Briquet and Susan Briquet his wife of Aiken county and State of South Carolina. Said deed was dated March 7th A. D. 1874 and acknowledged the same day before the clerk of the superior court of Richmond county at the city of Augusta in the State of Georgia. It is the intent and meaning of this deed to convey to the said James L. D. Morrison all the rights acquired by the said deed of Claudius Briquet and wife, with all the privileges and appurtenances thereunto belonging and subject to all the conditions of said deed. To have and to hold to the said party of the second part his heirs and assigns forever, and the said party of the first part will hereby warrant and defend the title hereby conveyed, against himself his heirs and all other persons. In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

EDW'D C. SMITH. [SEAL.]

STATE OF MISSOURI, } 88:
County of St. Louis, }

Be it remembered that on this twenty-first day of May, 1874, before me, the undersigned, a notary public for and within the county

aforesaid, came Edward C. Smith, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be his act and deed for the uses and purposes therein mentioned, and the said Edward C. Smith further states that he is single and unmarried.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

CHAS. BOEMLER,
Notary Public.

[SEAL.]

Filed and recorded June 3rd, 1874, at 10.40 a. m.

W. C. KENETT, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Edward C. Smith to James L. D. Morrison, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office, in Book 499, page 192.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 20th day of July, A. D. 1889.

WM. A. HOBBS, *Recorder.*

Also deed of William F. Barsh and wife to James L. D. Morrison, dated April 24th, 1874, acknowledged May 7th, 1874, and recorded June 3d, 1874.

89 *Deed.*

W. F. Barsh
to
J. L. D. Morrison.

This deed, made and entered into this twenty-fourth day of April, eighteen hundred and seventy-four by and between William F. Barsh and Augusta Georgia Barsh his wife, of the city of Charleston State of South Carolina, heirs of Samuel Hammond deceased, parties of the first part, and James L. D. Morrison of the city of St. Louis, State of Missouri, party of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of one hundred dollars to them paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds part (⅔rds) of all their interests and title in and to all the land in United States survey number twenty-five hundred (survey No. 2500) as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in St. Louis county, Missouri which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate

number one hundred and sixty-one (No. 161) and which was deed by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Augusta G. Barsh by deed dated September 29th, A. D. 1823, and duly recorded in St. Louis county, it being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which we are entitled as heirs of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

W. F. BARSH. [SEAL.]
AUGUSTA G. BARSH. [SEAL.]

Signed, sealed and delivered in the presence of—
WM. P. DELAUSSURE,
F. W. CAPUS, JR.,
Witnesses to Signature of W. F. Barsh.
D. L. HAMMOND,
L. RANDALL,
Witnesses to Signature of Augusta G. Barsh.

STATE OF SOUTH CAROLINA, } *ss:*
County of Charleston, }

Be it remembered that on the seventh day of May, A. D. 1874, before the undersigned, a notary public within and for the county of Charleston and State of South Carolina, personally came William F. Barsh and Augusta Georgia Barsh, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Augusta G. Barsh, being by me first made acquainted with the contents of said instrument upon an examination separate and apart from her husband, acknowledged that she executed the same freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Charleston, the day and year first above written.

[SEAL.] A. C. PALFREY,
Notary Public.

90 STATE OF MISSOURI, } *ss:*
County of St. Louis, }

I, the undersigned, recorder of said county, certify that the foregoing instrument of writing was filed for record in my office June

3d, at 10.40 o'clock a. m., 1874, and is truly recorded in Book 503, page 2.

Witness my hand and official seal the date last aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

Also deed of Thomas Price and wife to J. L. D. Morrison, dated April 27th, 1874, acknowledged the same date and recorded June 3d, 1874.

Deed.

T. M. Price & Wife
to
J. L. D. Morrison.

This deed, made and entered into this twenty-seventh day of April eighteen hundred and seventy-four by and between Thomas M. Price and Catherine V. Price his wife of the city of Charleston State of South Carolina, heirs of Samuel Hammond deceased, parties of the first part, and James L. D. Morrison of the city of St. Louis State of Missouri, party of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of one hundred dollars, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds part (⅔rds) of all their interest and title in and to all the land in United States survey number twenty-five hundred (survey No. 2500) as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in St. Louis county Missouri which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deed, by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Catherine V. Price by deed dated September 29th A. D. 1823, and duly recorded in St. Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which we are entitled as heirs of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said paties of the first part have hereunto set their hands and seals, the day and year first herein written.

THOMAS M. PRICE. [SEAL.]
CATHERINE V. PRICE. [SEAL.]

Signed sealed and delivered in the presence of—

C. MEZICK.
WILLIAM R. PARSELL.

STATE OF SOUTH CAROLINA, } ss:
County of Charleston, }

Be it remembered that on the twenty-seventh day of April, A. D. 1874, before the undersigned, a notary public within and for the county of Charleston and State of South Carolina, personally came Thomas M. Price and Catherine V. Price, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties
91 thereto and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Catherine V. Price, being by me first made acquainted with the contents of said instrument upon an examination separate and apart from her husband, acknowledged that she executed the same freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Charleston, the day and year first above written.

[SEAL.] ALFRED PRICE,
Notary Public.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder of said county, hereby certify that the foregoing instrument of writing was filed for record in my office June 3rd, at 10.40 a. m., 1874, and is truly recorded in Book 502, page 9.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, the recorder of deeds, do hereby certify that the within instrument of writing was filed for record in my office April 24th, 1877, at 4.40 p. m., and is truly recorded in Book 568, at page 205.

Witness my hand and official seal the date last aforesaid.

[SEAL.] D. H. MACADAM, *Recorder.*

Also deed of David Hammond to James L. D. Morrison, dated the 27th day of April, 1874, acknowledged on the same date and recorded June 3d, 1874.

Deed.

D. L. Hammond
to
J. L. D. Morrison.

This deed, made and entered into this twenty-seventh day of April eighteen hundred and seventy-four by and between David L. Hammond of the city of Charleston State of South Carolina one of the heirs of Samuel Hammond deceased, party of the first part and

James L. D. Morrison of the city of St. Louis, State of Missouri party of the second part, witnesseth: That the said party of the first part, in consideration of the sum of one hundred dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds part (⅔rds) of all his interest and title in and to all the land in the United States survey number twenty-five hundred (survey No. 2500) as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in St. Louis county Missouri which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said David L. Hammond by deed dated September 29th A. D. 1823, and duly recorded in St. Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the undivided two-thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges, and appurtenances thereto belonging, or in *in* anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

92 In witness whereof, the said party of the first — hath hereunto set his hand and seal the day and year first herein written.

D. L. HAMMOND. [SEAL.]

Signed, sealed and delivered in the presence of—

W. D. PORTER.
JAMES G. PORTER.

STATE OF SOUTH CAROLINA, }
County of Charleston, } *ss:*

Be it remembered that on the twenty-seventh day of April, A. D. 1874, before the undersigned, a notary public within and for the county of Charleston and State of South Carolina, personally came David L. Hammond, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned; and the said David L. Hammond further declares that he is unmarried.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Charleston, on the day and year first above written.

[SEAL.]

A. C. PALFREY,
Notary Public.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, 1874, at 10.40 a. m., and is truly recorded in Book 495, page 452.

Witness my hand and official seal the date last aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

Also deed of Mary A. Washington to James L. D. Morrison, dated May 16th, 1874, acknowledged on the same date, and recorded on June 3d, 1874:

Deed.

Mary A. Washington
to
J. L. D. Morrison.

This deed, made and entered into this sixteenth day of May eighteen hundred and seventy-four by and between Mary A. Washington of the city of Macon in the State of Georgia party of the first part, and James L. D. Morrison of the city and county of Saint Louis in the State of Missouri party of the second part, witnesseth: That the said party of the first part, in consideration of one hundred dollars to pay by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds part (⅔rds) of all her interest and title in and to all the land in United States survey number twenty-five hundred (survey 2500) as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in St. Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond father of the said Mary A. Washington by deed dated September 29th A. D. 1823 and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton
93 and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set her hand and seal, the day and year first herein written.

MARY ANN WASHINGTON. [SEAL.]

JAMES WOOD,
Not. Pub., Bibb Co., Ga.
9—937

STATE OF GEORGIA,
County of Bibb.

Be it remembered that on this sixteenth day of May, A. D. eighteen hundred and seventy-four, before me, the undersigned notary public, duly commissioned and qualified, came Mary A. Washington, personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be her act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

[SEAL.] JAMES WOOD,
Not. Pub., Bibb Co., Ga.

STATE OF GEORGIA,
Bibb County.

Personally came Mary A. Washington, who on oath saith that she is the daughter and one of the heirs-at-law of Colonel Samuel Hammond, formerly of Missouri Territory.

MARY ANN WASHINGTON.

Sworn to and subscribed before me this 16th day of May, 1874.

[SEAL.] JAMES WOOD,
Not. Pub., Bibb Co., Ga.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, at 10.40 a. m., A. D. 1874, and is truly recorded in Book 499, page 192.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

Also deed of Mary A. E. Kingman and others to James L. D. Morrison, dated May 18th, 1874, acknowledged on the same day and recorded on June 3rd, 1874:

Deed.

Mary A. E. Kingman *et al.*
to
J. L. D. Morrison.

This deed, made and entered into this eighteenth day of May eighteen hundred and seventy-four by and between Mary A. E. Kingman, Joseph S. McKie, and Anna W. McKie wife of the said Joseph S. McKie, Emma W. Kingman and Julia S. Kingman, all of the State of South Carolina parties of the first part, and James L. D. Morrison of the city and county of St. Louis in the State of Missouri party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of one hundred dollars, to them paid by the said party of the
94 second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim unto the said party of the second part, the undivided two-thirds part (⅔rds) of all their interest and title in and to all the land in United States survey number twenty-five hundred (2500) as located in township forty-five north (45 N.) in range seven (7) east of the fifth principal meridian in St. Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond, grandfather of the said parties of the first part, by deed dated September 29th 1823 and duly recorded in St. Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey number 2500 to which we are entitled as heirs of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

MARY A. KINGMAN. [SEAL.]
JOSEPH S. McKIE. [SEAL.]
ANNA W. McKIE. [SEAL.]
EMMA W. KINGMAN. [SEAL.]
JULIA S. KINGMAN. [SEAL.]

STATE OF GEORGIA, }
Richmond County, } ss:

Be it remember- that on this eighteenth day of May, A. D. eighteen hundred and seventy-four, before me, the undersigned, Chas. E. Coffin, a notary public, came Mary A. E. Kingman, Joseph S. McKie, Anna W. McKie, Emma W. Kingman, and Julia S. Kingman, personally known to me to be the same persons whose names are subsubribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Anna W. McKie, wife of the said Joseph S. McKie, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same freely, willingly, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal the day and year first above written.

CHAS. E. COFFIN,
[SEAL.] *Notary Public, Richmond Co., Ga.*

STATE OF GEORGIA, *Richmond County,* } ss:

Personally came before me, Charles E. Coffin, a notary public in and for said county, Mary A. E. Kingman, Emma W. Kingman, Julia S. Kingman, and Anna W. McKie, who on oath say that they are each daughters and heirs of Mrs. Margaret Ellen Kingman, deceased, and that said Margaret Ellen Kingman was the eldest daughter and one of the five children and heirs of Samuel Hammond, formerly of Missouri Territory and State; that their mother was married to Samuel Kingman prior to the year 1842; that such intermarriage continued until the year 1853 or 1854, when our mother died, leaving us all minors; that we were all born in the State of South Carolina and have never been out of the so-called Confederate States of America.

MARY A. KINGMAN.
EMMA W. KINGMAN.
JULIA S. KINGMAN.
ANNA W. McKIE.

95 Subscribed and sworn to this eighteenth day of May, A. D. 1874, before me—

CHAS. E. COFFIN,
[SEAL.] *Notary Public, Richmond Co., Ga.*

STATE OF MISSOURI, *County of St. Louis,* } ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, at 10.40 a. m., A. D. 1874, and is truly recorded in Book 494, page 464.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

Also deed of Sarah J. Hammond to J. L. D. Morrison, dated May 16th, 1874; acknowledged on the 24th of June, 1874; recorded June 30th, 1874:

Deed.

Sarah J. Hammond to J. L. D. Morrison.

This deed, made and entered into this sixteenth day of May, eighteen hundred and seventy-four by and between Sarah G. Hammond of the State of Arkansas party of the first part, and James L. D. Morrison of the city and county of Saint Louis and State of Missouri, party of the second part, witnesseth: That the said party of the first part, in consideration of ten ($10) dollars to pay by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds

part (⅔) of all her interest and title in and to all the land in United States survey number twenty-five hundred (survey 2500) as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in Saint Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Sarah G. Hammond by deed dated September 29th, A. D. 1823, and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said J. L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set her hand and seal, the day and year first herein written.

SARAH G. HAMMOND. [SEAL.]

STATE OF ARKANSAS, } ss:
County of St. Francis, }

Be it remembered that on this twenty-fourth day of June, A. D. eighteen hundred and seventy-four, before me, the undersigned notary public, duly commissioned, came Sarah G. Hammond, personally known to me to be the same person whose name is subscribed to the foregoing instrument as party thereto, and acknowledged the same to be her act and deed for the purposes
96 therein mentioned.

In testimony whereof I have hereunto set my hand and official seal the day and year first above written.

WM. H. HOWES,
[SEAL.] *Notary Public.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 30th, at 1 p. m., A. D. 1874, and is truly recorded in Book 495, page 558.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

Also the deed of Charles Hammond and wife to J. L. D. Morrison, dated May 16th, 1874, acknowledged on the same day, and recorded August 7th, 1874.

Deed.

C. L. Hammond
to
J. L. D. Morrison.

This deed, made and entered into this sixteenth day of May eighteen hundred and seventy-four by and between Charles L. Hammond and Sallie A. Hammond his wife of the State of Alabama party of the first part, and James L. D. Morrison of the city and county of St. Louis, in the State of Missouri party of the second part, witnesseth: That the said party of the first part, in consideration of ten ($10.00) dollars, to pay by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds (⅔rds) part of all their interest and title in and to all the land in United States survey (No. 2500) twenty-five hundred as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in Saint Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Charles L. Hammond by deed dated September 29th, A. D. 1823, and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said J. L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

CHARLES L. HAMMOND. [SEAL.]
SALLIE A. HAMMOND. [SEAL.]

In the presence of these witnesses—
N. SKAGGS.
WM. R. HILLSMAN.
GREEN T. McAFEE.

STATE OF ALABAMA, }
County of Talladega, } ss:

Be it remembered that on this sixteenth day of May, A. D. eighteen hundred and seventy-four (1874), before me, the undersigned, came Charles L. Hammond and Sallie A. Hammond,
97 his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as part- thereto, and they severally acknowledged the same

to be their act and deed for the purposes therein mentioned; and the said Sallie A. Hammond, wife of said Charles L. Hammond, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished her dower in the real estate therein described freely, willingly, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

[U. S. rev. stamp, $1.00.]

[SEAL.] GREEN T. McAFEE,
Notary Public for the State of Alabama and County of Talladega.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office August 7th, at 1.08 p. m., A. D. 1874, and is truly recorded in Book 497, page 361.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

Also deed of Samuel E. Hammond and wife to J. L. D. Morrison, dated 16th of May, 1874, recorded June 30th, 1874.

Deed.

S. E. Hammond
to
J. L. D. Morrison.

This deed, made and entered into this sixteenth day of May eighteen hundred and seventy-four by and between Samuel E. Hammond and Bettie A. P. Hammond his wife of the State of Arkansas part- of the first part, and James L. D. Morrison of the city and county of St. Louis in the State of Missouri party of the second part, witnesseth: That the said part- of the first part, in consideration of two hundred and fifty dollars, to — pay by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever quitclaim, unto the said party of the second part, the undivided one-half (½) of all their interest and title in and to all the land in United States survey number twenty-five hundred (2500) as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in St. Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Samuel E. Hammond by deed dated September 29th

A. D. 1823 and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the one-half of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights privileges and appur-
98 tenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

SAM'L E. HAMMOND. [SEAL.]
BETTIE A. P. HAMMOND. [SEAL.]

STATE OF ARKANSAS, } *sct:*
County of St. Francis, }

This day personally appeared before the undersigned, notary public, duly commissioned and qualified, Samuel E. Hammond, who, being first duly sworn, doth declare that he and his sister, Sarah G. Hammond, are grandchildren and heirs of the late Samuel Hammond, of Missouri, and that they resided within the so-called Confederate States during the entire period of the late civil war.

SAM'L E. HAMMOND.

Subscribed and sworn to before me this 24th day of June, 1874.

WM. H. HOWES,
Notary Public.

STATE OF ARKANSAS, } *ss:*
County of St. Francis, }

Be it remembered that on this twenty-fourth day of June, A. D. eighteen hundred and seventy-four, before me, the undersigned notary public, duly commissioned, came Samuel E. Hammond and Bettie A. P. Hammond, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Bettie A. P. Hammond, wife of the said Samuel E. Hammond, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished her dower in the real estate therein described freely, willingly, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

[SEAL.]

WM. H. HOWES,
Notary Public.

STATE OF MISSOURI, }
County of St. Louis, } ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 30th, A. D. 1874, at 1 p. m., and is truly recorded in Book 498, page 277.

[SEAL.] W. C. KENNETT, *Recorder.*

Also deed from Samuel Hammond and wife to J. L. D. Morrison and Edward C. Smith, dated February 19th, 1879; acknowledged February 24th, 1879; recorded June 11th, 1880:

Quitclaim Deed from S. Hammond and Wife to Morrison and Smith.

This indenture, made on the 19th day of February, A. D. one thousand eight hundred and seventy-nine, by and between Samuel E. Hammond and Bettie A. P. Hammond his wife of
99 Wheatley, in the county of St. Francis and State of Arkansas, parties of the first part, and James L. D. Morrison and Edward C. Smith, of the city of St. Louis and State of Missouri, parties of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of one thousand two hundred dollars to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents remise, release, and forever quitclaim, unto the said parties of the second part, the following-described lots, tracts, or parcels of land, lying, being and situate in the city of St. Louis and State of Missouri, to wit: All our right title and interest in and to all of United States survey number two thousand five hundred (2,500) as located in township forty-five (45) north, in range seven (7) east of the fifth principal meridian, located in virtue of New Madrid certificate number one hundred and sixty-one (161) in the name of Joseph Hunot or his legal representatives. This deed is made in full knowledge of the decision of the supreme court of the State of Missouri, in the case of Hammond *et al. vs.* Coleman *et al.* delivered on the tenth day of January A. D. one thousand eight hundred and seventy-nine. To have and to hold the same with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said parties of the second part, and their heirs and assigns, forever; so that neither the said parties of the first part, nor their heirs, nor any other person or persons for them or in their names or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these presents be excluded and forever barred.

In witness whereof the said parties of the first part have
100 hereunto set their hands and seals the day and year first above written.

S. E. HAMMOND. [SEAL.]
BETTIE A. P. HAMMOND. [SEAL.]

STATE OF ARKANSAS, } ss:
County of Monroe, }

Be it remembered that on this 24th day of February, A. D. 1879, before the undersigned, a notary public within and for the county of Monroe and State of Arkansas, personally came S. E. Hammond and Bettie A. P. Hammond, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Bettie A. P. Hammond, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband, acknowledged that she executed the same, and relinquishes her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at my office, in Monroe county, the day and year first above written.

My term of office as notary public will expire 1st Jan., 1881.

M. H. VAUGHN,
Notary Public.

STATE OF MISSOURI, } ss:
City of St. Louis, }

IN THE RECORDER'S OFFICE.

101 I, the undersigned, recorder of deeds of said city, do hereby certify that the within instrument of writing was, at 11 o'clock and 16 minutes a. m. on the 11th day of June, A. D. 1880, duly filed for record in this office, and is recorded in the records of this office in Book 635, at page 64.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal this 11th day of June, A. D. 1880.

C. W. IRWIN, *Recorder.*

Deed of Sarah G. Hammond to Edward C. Smith, dated August 13th, 1880; acknowledged on the same date and recorded August 20th, 1880:

Deed from S. G. Hammond to E. C. Smith.

This indenture, made on the 13th day of August, A. D. one thousand eight hundred and eighty, by and between Sarah G. Hammond (unmarried), of the county of St. Francis and State of Arkansas, party of the first part, and Edward C. Smith, of the city of St. Louis and State of Missouri, party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of six hundred ($600.00) $\frac{00}{100}$ dollars, to her paid by the said party of the second part, the receipt of which is hereby acknowledged does by these presents remise, release, and forever quitclaim unto the said party of the second part the following-described lots, tracts,

or parcels of land lying, being, and situate in the city of St. Louis and State of Missouri, to wit: All of her right, title, and interest in and to the land within United States survey number two thousand five hundred (2500), in township 45 north, range 7 east of the fifth principal meridian, in the name of Joseph Hunot or his legal repsentatives. This sale is made in full knowledge of the de-
102 cision of the case of Hammond *et al. vs.* Coleman *et al.* rendered in the supreme court of the State of Missouri, on the 10th day of January, A. D. 1879; to have and to hold the same, with all the rights, immunities, privileges, and appurtenances thereto belonging, unto the said party of the second part and his heirs and assigns forever, so that neither the said party of the first part nor her heirs nor any other person or persons for her in her name or behalf shall or will hereafter claim or demand any right or title to the aforesaid premises or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

SARAH G. HAMMOND. [SEAL.]

STATE OF ARKANSAS, } ss:
County of St. Francis, }

Be it remembered that on this 13th day of August, A. D. 1880, before the undersigned, a notary public within and for the county of St. Francis aforesaid, personally came Sarah G. Hammond, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be her free act and deed for the purposes therein mentioned, and the said J. W. Redus further declared her to be single and unmarried.

Copy of Seal. J. W. Redus, notary public, St. Francis Co., Ark.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Wheatley, Ark., the day & year first above written. My term of office as a notary public will expire Oct. 15th, 1882.

103 J. W. REDUS, *N. P.*

Filed and recorded August 20th, 1880, at 4.30 p. m.

C. W. IRWIN, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city, certify the foregoing to be a true copy of an instrument of writing executed by Sarah J. Hammond to Edward C. Smith, together with the certificate of acknowledgement and date of filing and recording thereof as the same remains of record in my office in Book 635, page 239.

[SEAL.] Witness my hand and official seal this 8th day of April, A. D. 1884.

THOS. F. FARRELLY, *Recorder.*

Also deed of J. L. D. Morrison and wife to Edward C. Smith, dated 23d of March, 1881; acknowledged March 28th, 1881; recorded March 10th, 1884:

Quitclaim Deed from Morrison and Wife to E. C. Smith.

This indenture, made on the twenty-third day of March, A. D. one thousand eight hundred and eighty-one, by and between James L. D. Morrison and Adele S. Morrison his wife, of the city of St. Louis and State of Missouri, party of the first part, and Edward C. Smith, of the city of St. Louis, and State of Missouri, party of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of five $\frac{00}{100}$ dollars, to them paid by
104 the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, remise, release and forever quitclaim unto the said party of the second part, the following-described parcels of land, lying, being and situate in the city of St. Louis and State of Missouri to wit: Four undivided seventy-fifth ($\frac{4}{75}$) parts of the land in that part of United States survey number two thousand five hundred (2,500) located in township forty-five (45) north in range seven (7) east, that was conveyed by Rufus Easton and wife, to Samuel Hammond, by deed dated September 29th A. D. 1823, and said four undivided seventy-fifth parts was conveyed by Mary Ann Washington (with other undivided interests) to James L. D. Morrison by deed dated May 16th, A. D. 1874, and recorded in the records of St. Louis in volume number four hundred and ninety-nine (499) page one hundred and ninety-two (192). This said four undivided seventy-fifth ($\frac{4}{75}$) part being two-fifth parts of two-thirds of the interest she inherited as one of the five children of Samuel Hammond. The said James L. D. Morrison hereby retains a lien on the land conveyed by this deed, for the sum of seven thousand dollars ($7,000) or any part thereof that the said Mary Ann Washington claims from the said Smith, and which the said Smith or the said Morrison may be deemed and held bound to pay, and also for all costs and liabilities accruing from it. To have and to hold the same, with all the rights, immunities privileges and appurtenances thereto belonging, unto the said party of the second part, and to his heirs and assigns, forever; so that neither the said parties of the first part, nor their heirs, nor any other person or persons for them or in their names or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises or any part
105 thereof but they and every of them shall, by these presents, be excluded and forever barred, and the said parties of the first part are not to be liable to any taxes on said land.

In witness whereof, that said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JAS. L. D. MORRISON. [SEAL.]
ADELE S. MORRISON. [SEAL.]

STATE OF MISSOURI, }
City of St. Louis, } ss:

Be it remembered that on this twenty-eighth day of March, A. D. 1881, before the undersigned, a notary public within and for the city of St. Louis and State of Missouri, personally came James L. D. Morrison and Adele S. Morrison, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned, and the said Adele S. Morrison, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband, acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in St. Louis city, the day and year first above written. My term of office will expire, Nov. 20th, 1882.

THOS. S. NOONAN, *No.* 502.

106 STATE OF MISSOURI, }
City of St. Louis, } ss:

I, the undersigned, recorder of deeds for said city and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the 10th day of March, A. D. 1884, at 9.35 o'clock a. m., and is truly recorded in Book 725, page 170.

[SEAL.] Witness my hand and official seal on the day and year aforesaid.

THOS. F. FARRELLY, *Recorder.*

Deed of J. L. D. Morrison and wife to Edward C. Smith, dated March 24th, 1881; acknowledged March 28th, 1881; recorded March 10th, 1884:

Quitclaim Deed from Morrison and Wife to E. C. Smith.

This indenture, made on the twenty-fourth day of March, A. D. one thousand eight hundred and eighty-one, by and between James L. D. Morrison and Adele S. Morrison his wife, of the city of St. Louis and State of Missouri, parties of the first part, and Edward C. Smith, of the city of St. Louis and State of Missouri, party of the second part, witnesseth: that the said parties of the first part, in consideration of the sum of five $\frac{00}{100}$ dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, remise, release and forever quitclaim unto the said party of the second part, the following-described parcels of land, lying, being and situate in the city of St. Louis and State of Missouri, to wit: two undi-

vided fifth parts of all the land in United States survey number two thousand and five hundred (2500) in township forty
107 five (45) north in range seven (7) east, that has been conveyed to the said James L. D. Morrison, as follows: viz: by deed of Joseph S. McKie and wife, Mary A. E. Kingman, Emma W. Kingman, and Julia S. Kingman, recorded in the records of St. Louis in volume number 494 page 464, by deed of David L. Hammond, recorded in said records in volume number 495 page 452, by deed of Sarah G. Hammond recorded in said records in volume number 495 page 558, by deed of Charles L. Hammond recorded in said records in volume number 497 page 361, by deed of Samuel E. Hammond, recorded in said records in volume number 498, page 277, by deed of Edward C. Smith, recorded in said records in volume number 499 page 192, by deed of William F. Barsh and wife recorded in said records in volume number 503 page 2, and by deed of Thomas M. Price and wife, recorded in said records in volume number 568, page 205, upon the terms and conditions following, to wit: Subject to the payment of eleven hundred and forty $\frac{89}{100}$ dollars, to the said James L. D. Morrison, and also two-fifths of the sums of seven thousand dollars ($7,000), covenanted to be paid to Susan Briquet, five thousand dollars ($5,000) covenanted to be paid to Alton R. Easton, three thousand five hundred dollars ($3,500) covenanted to be paid to Sharp and Broadhead, and S. N. Holliday. The said Morrison hereby retains a lien on the land conveyed by this deed for the said sum of eleven hundred and forty $\frac{89}{100}$ dollars due to himself, and also for so much of the said two-fifths of the said sums of seven thousand dollars, five thousand dollars, and three thousand five hundred dollars as above described, as may have to be paid by the said Morrison. To have and to hold the same, with all the rights, immunities, privileges and appurtenances
108 thereto belonging, unto the said party of the second part, and to his heirs and assigns forever; so that neither the said parties of the first part, nor their heirs, nor any other person or persons for them or in their names or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these presents, be excluded and forever barred, and the said parties of the first part are not to be liable for any taxes on the said land.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JAS. L. D. MORRISON. [SEAL.]
ADELE S. MORRISON. [SEAL.]

STATE OF MISSOURI, }
City of St. Louis, } ss:

Be it remembered that on this twenty-eighth day of March, A. D. 1881, before the undersigned, a notary public within and for the city of St. Louis and State of Missouri, personally came James L. D. Morrison and Adele S. Morrison his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowl-

edged the same to be their act and deed for the purposes therein mentioned, and the said Adele S. Morrison, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband acknowledged that *her* executed the same and relinquished her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

109 In testimony whereof I have hereto set my hand and affixed my official seal, at my office, in St. Louis city, the [SEAL.] day and year first above written.

My term of office will expire Nov. 20th, 1882.

THOS. S. NOONAN, *No.* 501.

For and in consideration of the sum of one dollar to me in hand paid I hereby release all the land described in the within deed from the lien of any part of the sums therein enumerated to be paid to Susan Briquet, Sharp and Broadhead, and S. N. Holliday, and hereby declare that all amounts due to said Briquet, Sharp and Broadhead, and Holliday have been fully paid and satisfied and that said Edward C. Smith has paid his share thereof; and I also release my lien to the extent of three hundred dollars, being part of $1,140.89 due to myself, which said amount of $300 I hereby acknowledge to have received of Edward C. Smith.

In testimony whereof I have hereunto set my hand and seal this 7th day of October, 1881.

JAS. L. D. MORRISON. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this 7th day of October, A. D. 1881, before the undersigned, a notary public within and for the city and State aforesaid, personally came James L. D. Morrison, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of release as the party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned.

110 In testimony whereof I have hereunto set my hand and affixed my notarial seal, at the city aforesaid, the day and [SEAL.] year first above written.

My term of office will expire June 28th, 1885.

THOS. S. NOONAN,
Notary Public, City of St. Louis.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the 10th day of March, A. D. 1884, at 9.35 o'clock a. m., and is truly recorded in Book 727, page 33.

[SEAL.] Witness my hand and official seal on the day and year aforesaid.

THOS. F. FARRELLY, *Recorder.*

Also deed of J. L. D. Morrison and wife to Edward C. Smith, dated 24th December, 1887, acknowledged December 30th, 1887, recorded December 31st, 1887:

Deed from Morrison and Wife to E. C. Smith.

Whereas difficulties have arisen between James L. D. Morrison and Adele S. Morrison his wife and Edward C. Smith, all of the city of St. Louis and State of Missouri, in regard to the intent and meaning of three several deeds from the said Morrison and wife to the said Smith, one dated August 6th 1874, and recorded in the office of the registry of deeds for St. Louis, in volume number 729, page 15, one dated March 23d 1881, and recorded in same
111 office in volume number 725 page 170, and one dated March 24th, 1881, and recorded in the same office in volume number 727 page 33, and whereas, a suit is now pending in the supreme court of the State of Missouri, wherein said Morrison and wife are plaintiffs and the said Smith is defendant, said suit being numbered 4253 of said court, and is the same suit that was appealed from the circuit court of this city, and is there numbered 69170 of said court, and wherein said circuit court rendered a judgment against the said Smith as is there fully shown and recorded, and whereas, it is agreed by and between the said Morrison and wife and Smith, that an end shall be made of this litigation and the rights and interests of each party be fully determined, now therefore, in virtue of the above facts, and in consideration of the dismissal by said Smith of his appeal to the supreme court in said suit above described, leaving the judgment of the circuit court to remain, that the aforesaid deeds of March 23d and 24th 1881 are in full force, and in further consideration of the agreement the said Smith shall, after the date of this agreement, advance all moneys necessary for the costs of court already incurred and unpaid, and for expenses of every kind necessary to be incurred in the future litigation of the "Hammond" suits (so called) wherein the heirs of Samuel Hammond and their grantees (including said Morrison and Smith) are plaintiffs or defendants, and being ejectment suits for lands within United States survey number 2500 in the name of Joseph Hunot or his legal representatives, in the city of St. Louis and State of Missouri, and also in further consideration of the sum of five dollars, to them in hand paid and the receipt whereof is hereby acknowledged, the
112 said James L. D. Morrison and Adele S. Morrison his wife, do in addition to the interests conveyed by the above-described deeds of March 3d and 24th 1881, hereby remise, release and forever quitclaim to the said Edward C. Smith, the following-described interests, in lots, tracts, or parcels of land, lying, being and situate in the city of St. Louis and State of Missouri, to wit: The undivided one-fifth part of all the right title and interest in and to

the following-described lands in said United States survey number 2500, which were acquired by the said Morrison and wife by deeds made in the year 1874, by said Edward C. Smith, and also by the heirs of Samuel Hammond to the said James L. D. Morrison, as shown by said deeds duly recorded in the office of the recorder of deeds for St. Louis, the same being lots number forty-six (46), forty-eight (48), fifty (50), fifty-two (52) sixty (60) sixty-one (61) sixty-eight (68) and the west end of lot fifty-six (56) of Peter Lindell's second addition to -he city of St. Louis. Said west end lot fifty-six (56), is bounded easterly by a line parallel with King's highway, and distant two hundred and thirty-seven (237) feet and ¾ inch easterly from it. To have and to hold, the said undivided one-fifth part of said above-described lands, unto the said Edward C. Smith, and his heirs and assigns, and the said James L. D. Morrison, will warrant and defend the title to the above-described premises against the lawful claims and demands of all persons claiming under, by or through said Morrison, but against no other person or persons, whomsoever, and the said Morrison and wife, are not to be held liable for any taxes on the lands above conveyed.

In testimony whereof the said James L. D. Morrison and Adele S. Morrison, his wife, have hereunto set their hands and seals
113 this twenty-fourth day of December, A. D. 1887.

JAS. L. D. MORRISON. [SEAL.]
ADELE S. MORRISON. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this 30th day of December, 1887, before me personally appeared Jas. L. D. Morrison and Adele S. Morrison, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at my office, in said city of St. Louis, the day and year first above written.

GEORGE A. HYNES,
Notary Public.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the thirty-first day of December, A. D. 1887, at 4.40 o'clock p. m. and is truly recorded in Book 846, page 341.

[SEAL.] Witness my hand and official seal on the day and year aforesaid.

WM. A. HOBBS, *Recorder.*

Also deed of J. L. D. Morrison to Edward C. Smith, dated
114 March 30th, 1887, acknowledged April 6th, 1887, and recorded May 7th, 1887:

Deed from Morrison to Smith.

Whereas on the 12th day of March 1879, an agreement in writing and under seal, was made and entered into between James L. M. Morrison, Daniel T. Jewett and Edward C. Smith, and is recorded in the office of the recorder of deeds for St. Louis in Book Number 733 at page 451, in which said agreement various interests in sundry lots in Peter Lindell's second addition are specified, viz., lots number- forty-six (46) fifty-seven (57) fifty-eight (58) fifty-nine (59) and sixty-five, and certain releases were agreed on as is fully shown in said agreement, and whereas, all agreements and stipulations in said instrument of writing contained relating to said lots number- fifty-seven (57) fifty-eight (58) fifty-nine (59) and sixty-five, have been fully carried out and settled, so that there only remains the interests in said lot forty-six (46) to be arranged. Now therefore the said James L. D. Morrison, and Adele S. Morrison his wife, in consideration of the entire settlement and fulfillment on the part of the said Edward C. Smith of his obligations in said agreement, which they hereby acknowledge to have been heretofore fully and completely carried out in accordance with said agreement, and in further consideration of the sum of five dollars to them in hand paid the receipt of which is acknowledged, hereby grant, release and quitclaim to the said Edward C. Smith, the undivided fourteen and ninety-one, one-hundredths per cent. (14.91 %) of the said lot forty-six (46), now known as city block number three thousand eight hundred and ninety-nine (3899). To have and to hold
115 the same, with all the rights, immunities and appurtenances thereto belonging, to the said Edward C. Smith, and to his heirs and assigns forever.

And the said Daniel T. Jewett hereby declares that all interests specified in said agreement affecting himself, have been fully carried out and satisfied.

And the said Edward C. Smith, accepts the interest hereby conveyed to him, as a final settlement of all interests in said agreement, as evidenced by his signature and seal to this instrument.

In testimony whereof, the said James L. D. Morrison and Adele S. Morrison his wife, Daniel T. Jewett, and Edward C. Smith, have hereunto set their hands and seals this thirtieth day of March, A. D. 1887.

JAS. L. D. MORRISON. [SEAL.]
ADELE S. MORRISON. [SEAL.]
D. T. JEWETT. [SEAL.]
EDW'D C. SMITH. [SEAL.]

STATE OF ARKANSAS, } ss:
County of Garland, }

On this sixth day of April, A. D. 1887, before me personally app-ared James L. D. Morrison, of the city of St. Louis and State of Missouri, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Hot Springs, Garland Co., Ark., the day and year above written. My official term
116 expires Feb'y 14th, 1891.

[SEAL.]

HERMANN HIRSHFIELD,
Notary Public.

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this sixth day of May, 1887, before me personally appeared Adele S. Morrison, wife of James L. D. Morrison, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in St. Louis, the day and year first above written.

[SEAL.]

GEORGE A. HYNES,
Notary Public.

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this 7th day of May, A. D. 1887, before me personally appeared Daniel T. Jewett and Edward C. Smith, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in St. Louis, the day and year first above written.

[SEAL.]

FRANCIS VALLE,
Notary Public, City of St. Louis, Missouri.

117 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the seventh day of May, A. D. 1887, at 4.55 o'clock p. m., and is truly recorded in Book 826, page 213.

Witness my hand and official seal on the day and year aforesaid.

[SEAL.]

WM. A. HOBBS, *Recorder.*

Also release deed of J. D. L. Morrison to Edward C. Smith, dated June 7th, 1882, acknowledged on the same day, and recorded on March 10th, 1884:

Deed from Morrison and Wife to E. C. Smith.

Whereas sundry deeds heretofore made by James L. D. Morrison and wife to Edward C. Smith, conveying undivided interests in United States survey number two thousand five hundred (2500) in the city (formerly county) of St. Louis, certain liens upon the lands or interests conveyed thereby, in favor of the said James L. D. Morrison, as shown by said deeds. Now this indenture witnesseth, that I, the said James L. D. Morrison, in consideration of the sum of five dollars to me in hand paid, and for other valuable considerations me moving thereto, hereby release to the said Smith, all liens reserved by me upon the lands or interests conveyed in any
118 and all of said deeds heretofore made to the said Smith conveying lands embraced in United States survey number two thousand five hundred (2500), except the lien retained in deed of myself and wife dated March 23d 1881, a certified copy of which deed, certified by said Smith, is recorded in the office of the recorder of St. Louis in volume number six hundred and sixty-one (661) page two hundred and seventy (270), and also except the lien in the deed of myself and wife dated July 29th 1881, conveying interests in said survey, which deed is not yet recorded, and it is also expressly agreed and understood, that this release, has no effect upon the lands set off to the said Smith in partition suit number fifty-six thousand and fifty-four (56054), brought in the circuit court of the city of St. Louis, as set out in said decree.

In testimony whereof, I have hereunto set my hand and seal, this seventh day of June A. D. 1882.

JAS. L. D. MORRISON. [SEAL.]

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

Be it remembered that on this seventh day of June, A. D. 1882, before the undersigned, a notary public within and for the city of St. Louis, State of Missouri, personally came Jas. L. D. Morrison, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand
119 [SEAL.] and affixed my official seal this seventh day of June, A. D. 1882, at office, in St. Louis city. My term will expire September 21, 1882.

JOHN F. O'ROURKE,
Notary Public, St. Louis City, Mo.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the 10th day of March, A. D. 1884, at 9.35 o'clock a. m., and is truly recorded in Book 721, page 388.

Witness my hand and official seal on the day and year aforesaid.

[SEAL.] THOS. F. FARRELLY, *Recorder.*

Also release deed of J. L. D. Morrison to Edward C. Smith, dated February 26th, 1884, acknowledged on the same date, and recorded on the 29th of March, 1884:

Deed from Morrison to E. C. Smith.

Whereas, sundry deeds heretofore made by James L. D. Morrison and Adele S. Morrison his wife to Edward C. Smith, conveying certain undivided interests in United States survey number two thousand five hundred (2500), contain liens in favor of the said James L. D. Morrison, for the sum of seven thousand dollars ($7,000) or any part thereof that the said Morrison may have to pay to Mary Ann Washington or her assigns on account of the said Smith and also for any costs and liabilities accruing thereby. Now
120 therefore, I, the said James L. D. Morrison in consideration of the sum of five dollars to me in hand paid, and for other valuable considerations me moving thereto, hereby release to the said Smith or his assigns all liens reserved by me upon the lands or interests conveyed in any and all of said deeds heretofore made to the said Smith as above described, except the lien retained by me on certain lands in city block number three thousand eight hundred and ninety-eight (3898) described as follows: Beginning at a point in the southern line of Berlin avenue, two hundred feet eastward from Taylor avenue, thence eastwardly with the south line of Berlin avenue two hundred and fifty feet to a point, thence southwardly with a line parallel to Taylor avenue four hundred and forty-six feet four and one-half inches to a point in the northern line of Maryland avenue, thence westwardly with Maryland avenue, one hundred and twenty-five feet to a point, thence northwardly with a line parallel to Taylor avenue, two hundred and twenty-three feet two and one-fourth inches to a point, thence westwardly with a line parallel to Berlin avenue one hundred and twenty-five feet to a point, thence northwardly with a line parallel to Taylor avenue, two hundred and twenty-three feet two and one-fourth inches to the place of beginning, the same being described in partition suit number 56054 and the decree is recorded in the records of St. Louis in volume number 669 page 519 and following and the lien is retained on this land as described in said partition suit and decree thereof.

As witness my hand and seal this 26th day of February, A. D. 1884.

JAS. L. D. MORRISON. [SEAL.]

121 STATE OF MISSOURI, } ss:
City of St. Louis, }

On this 26th day of February, A. D. 1884, before me personally appeared James L. D. Morrison, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In testimony whereof I have hereunto set my hand [SEAL.] and affixed my official seal, at my office, in said city, the day and year first above written. My term expires June 28th, 1885.

THOS. S. NOONAN,
Notary Public.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify that the foregoing instrument of writing was filed for record in my office on the 29th day of March, A. D. 1884, at 9.04 o'clock a. m., and is truly recorded in Book 727, page 128.

[SEAL.] Witness my hand and official seal on the day and year aforesaid.

THOS. F. FARRELLY, *Recorder.*

Also deed of D. T. Jewett and wife to Edward C. Smith, dated October 19th, 1889, acknowledged on the same date.

(Mr. Smith says there is no such deed.)

Also deed of J. L. D. Morrison and wife to D. T. Jewett, dated December 30th, 1887, and recorded December 30th, 1887:

122 *Deed from Morrison and Wife to D. T. Jewett.*

This indenture, made on the thirtieth day of December, A. D. one thousand eight hundred and eighty-seven, by and between James L. D. Morrison and Adele S. Morrison his wife, of the city of St. Louis and State of Missouri, parties of the first part, and Daniel T. Jewett of the city of St. Louis in the State of Missouri, party of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of one dollar and professional services as attorney, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, grant and sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following-described lots, tracts or parcels of land, lying, being and situate in the city of St. Louis and State of Missouri, to wit:

All of the undivided six and seventy-six one-hundredths (6.76)

per cent. of lots number forty-six (46) forty-eight (48) fifty (50) fifty-two (52), sixty (60), sixty-one (61), sixty-eight (68), and the west end of lot fifty-six (56) of Peter Lindell's second addition to St. Louis. Said west end of lot fifty-six (56), is bounded easterly by a line parallel with King's highway, and distant two hundred and thirty-seven (237) feet ⅞ inch easterly from it. To have and to hold the premises aforesaid, with all and singular rights, privileges and appurtenances and immunities thereto belonging, or in anywise appertaining, unto the said party of the second part, and unto his heirs and assigns, forever: The said James L. D. Morrison hereby covenanting that the said premises are free and clear of any encumbrance done by him; and that he will warrant and
123 defend the title to the said premises unto the said party of the second part, and unto his heirs and assigns, forever, against the lawful claims and demands, of all persons claiming under, by or through said grantor, but against no other person or persons whomsoever, and the said parties of the first part, are not to be held liable for any taxes on the lands above conveyed.

In witness whereof the said parties of the first part
[SEAL.] have hereunto set their hands and seals the day and year first above written.

JAMES L. D. MORRISON. [SEAL.]
ADELE S. MORRISON. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this thirtieth day of December, 1887, before me personally appeared James L. D. Morrison and Adele S. Morrison, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at my office, in said city of St. Louis, the day and year first above written.

GEORGE A. HYNES,
Notary Public.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State,
124 do hereby certify that the foregoing instrument of writing was filed for record in my office on the thirty-first day of December, A. D. 1887, at 4.41 o'clock p. m., and is truly recorded in Book 852, page 205.

[SEAL.] Witness my hand and official seal on the day and year aforesaid.

WM. A. HOBBS, *Recorder.*

It is agreed that if either party omits to offer any deed through inadvertancy or mistake that it may be put in subsequently, it having been first submitted.

By Mr. JEWETT: I will state for the purpose of preserving the record that over a year ago James L. D. Morrison died and his legal representatives are made parties to this suit by the pleadings; that all the heirs of James L. D. Morrison who are entitled to any portion of this land under his will are made parties to this suit.

It is agreed that the value of the property is more than $10,000.

It is agreed that the taxes paid by the defendants offset the rents and profits, and it is admitted that the heirs are all of age.

The plaintiffs rested their case on the evidence.

The defendants, to maintain the issues on their part, introduced the following evidence:

By Mr. REYNOLDS: We will offer in evidence this map.

(Omitted as per stipulation.)

125 Also deed, marked "Exhibit 13," from Rufus Easton to Samuel Hammond, dated September 29th, 1823; acknowledged October 19th, 1823; recorded February 9th, 1824:

Deed from R. Easton to S. Hammond.

This deed, made this 29th day of September, in the year of our Lord one thousand eight hundred and twenty-three, between Rufus Easton of the town of St. Charles in the State of Missouri and Abial his wife of the first part, and Samuel Hammond of the county of Jefferson in the said State, of the second part, witnesseth, that the said Rufus Easton and wife, for and in consideration of the sum of fifteen hundred and eighty three dollars to him in hand paid, by the said Samuel Hammond and pursuant to the condition of a certain bond executed by the said Rufus Easton to the said Samuel Hammond and James J. Wilkenson, dated 3rd September 1818, they the said Rufus Easton and wife have granted, bargained and sold and by these presents do grant, bargain and sell convey and confirm unto the said Samuel Hammond and to his heirs and assigns forever, two hundred and forty acres of land and the whole of the following tract except two hundred and thirty-four acres of land of the said tract conveyed to William H. Ashley, as will appear by deed of 1819, recorded in the recorder's office of St. Louis county, to wit: four hundred and eighty acres of land described in the following entry: Rufus Easton as the legal representative of Joseph Hunot entered four hundred and eighty acres of land by virtue of a certificate No. 161, issued by Frederick Bates, Esquire, recorder of land titles,
126 to wit: that part of fractional section seventeen in township forty-five north and range seventeen west (the township in which St. Louis is situate) lying north of the Cul-de-sac fields—fractional section eighteen in the same township and so much off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity, which entry is dated St. Louis June 16th 1818, and signed Joseph C. Brown for Rufus Easton. To have and to hold the above described and granted premises, being two hundred and forty acres of land hereby conveyed together with the appurtenances unto him the said Samuel

Hammond and to his heirs and assigns forever. And for the consideration above mentioned the said Rufus Easton doth covenant and agree with the said Samuel Hammond his heirs and assigns the title to the above-granted two hundred and forty acres of land he will forever warrant and defend unto the said Samuel Hammond his heirs and assigns against the claims and demands of all persons whomsoever.

In witness whereof the said Rufus Easton and wife do hereunto set their hands and seals the day and year first above written.

RUFUS EASTON. [SEAL.]
ABIAL EASTON. [SEAL.]

Signed, sealed, and delivered in presence of—
ROBERT SIMPSON.
GUSTAVUS A. HAMLIN.

STATE OF MISSOURI, } ss:
County of St. Louis, }

This day personally appeared before me, the clerk of the circuit court of the county of St. Louis, the within-named Rufus
127 Easton and Abial, his wife, who are personally known to me as the grantors in the within deed, and acknowledged the same to be their acts and deeds and hands and seals for the purposes therein mentioned; and the said Abial Easton, being by me examined separately and apart from her said husband, acknowledged that she executed the same freely and voluntarily and without the compulsion or undue influence of her said husband.

Given under my hand and seal of office, at St. Louis,
[SEAL.] this ninth day of October, eighteen hundred and twenty-three.

ARCHIBALD GAMBLE, *Clerk.*

Recorded February 9th, 1824.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Rufus Easton and wife to Samuel Hammond, together with the acknowledgment and date of recording thereof, as the same remains of record in my office in Book L, original, page 489.

In witness whereof I have hereunto set my hand and
[SEAL.] official seal this 1st day of May, A. D. 1888.

WM. A. HOBBS, *Recorder.*

128 Also "Exhibit 14," deed from Samuel Hammond, by Sheriff John K. Walker, to Relfe and Chew, dated Nov. 4th, 1823:

Deed from S. Hammond, by Sh'ff, to Relf & Chew.

To all to whom these presents shall come I, John K. Walker, sheriff of the county of St. Louis, in the State of Missouri, send greeting:

Whereas a certain writ of execution issued from the clerk's office of the supreme court for the third judicial district of the State of Missouri, returnable to the November term of said court, in the year one thousand eight hundred and twenty-three, in favor of Richard Relfe, Beverly Chew, and Mary Clark against Samuel Hammond, and the said writ of execution being directed to the sheriff of St. Louis county, and to me, the said sheriff, delivered, a copy whereof is hereunto annexed and makes a part and parcel of this deed, by virtue of which said writ of execution I, the said sheriff, on the fifth day of September, in the year of our Lord one thousand eight hundred and twenty-three, did levy upon and seize all the right, title, interest, estate, and property of the said Samuel Hammond in and to the following-described real estate, to wit: First, a tract of land situate, lying, and being in the old common fields of St. Louis, containing two and one-half arpents front (eastwardly) by forty arpents deep (more or less), bounded west by lands belonging to the estate of Charles Gratiot, the other boundaries of which are to me unknown; second, a tract of land containing two hundred and forty arpents, more or less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond spring; third, a lot of ground in the city of St. Louis containing sixty-four feet front on Third street by one hundred feet deep (more or less), and bounded on the east by said Third street, on the south by a cross-street called South C street, on the west by a lot belonging to the estate of James Irwin, and on the north by a lot heretofore the property of Col. Rufus Easton, on which lot stands the house known by the name of Hammond's yellow house; fourth, a lot of ground containing twenty-eight feet, English measure, front on Third street by one hundred and fifty feet, French measure, in depth, and bounded on the west by said Third street, on the south by a cross-street called South D street, on the east by a lot of Alexander Bellissime, and on the north by a lot of John Beaufity. On this lot stands a two-story brick house, and is the same house and lot acquired by said Hammond of Thompson P. Williams, as will appear by reference to the deed bearing date the fourth day of August, eighteen hundred and twenty, and duly recorded in the recorder's office of St. Louis county in Book S, page 461; fifth, two lots of ground in that part of or addition to St. Louis laid off by John B. C. Lucas and Auguste Chouteau, containing two hundred and twenty-two feet from east to west by one hundred and fifteen feet from north to south, and bounded on the south by a cross-street called South B street, on the west by Fifth street, on the north by a lot belonging to the estate of William Sullivan, and on the east by Fourth street, and is the same

acquired by said Hammond jointly with Moses Scott of Auguste Chouteau and wife by deed bearing date the twenty-seventh day of May, eighteen hundred and sixteen, and recorded in the recorder's office of St. Louis county in Book F, page 66; sixth, a lot of ground containing twenty feet front by eight feet deep and bounded on the west by Church street, on the south and east by a lot of Daniel Freeman, and on the north by a lot hereinafter described. On this lot stands a two-story white house, and is the same house and lot acquired by said Hammond of Daniel Shope and wife; seventh, a vacant lot containing sixty feet front by forty feet deep, French measure, and bounded on the west by Church street, on the north by a cross-street, and on the east by a lot heretofore the property of Christian Smith, and on the south by the lot last above described, and is the same lot acquired by said Hammond of Christian Smith by deed bearing date the fifteenth day of November, eighteen hundred and nineteen, and recorded in the recorder's office of St. Louis county in Book K, page 152, together with all and singular the buildings, improvements, rights, and privileges to the aforesaid tracts of land and town lots in anywise appertaining, and the same being advertised agreeably to law, as
129 will appear from a copy of the advertisement hereunto annexed and which also makes a part and parcel of this deed; by virtue of which said writ of execution I did, on the eighth day of October, in the year eighteen hundred and twenty-three, agreeably to the advertisement thereof, at the court-house door, in the city of St. Louis, during the sitting of the St. Louis county circuit court, expose to public sale for ready cash all the right, title, interest, estate, and property of the said Samuel Hammond in and to the above-described tracts of land and town lots, to Beverly Chew and Richard Relfe being the highest and last bidders for the same at the prices and sums as follows, to wit: For the first-mentioned tract of land, the sum of sixty dollars; for the second, the sum of one hundred dollars; for the third (being a house and lot), the sum of twenty dollars; for the fourth, the sum of one hundred dollars; for the fifth, the sum of fifty dollars; for the sixth, the sum of one hundred and thirty dollars; for the seventh, the sum of twenty dollars, making in all the sum of four hundred and eighty dollars, the same were stricken off and sold to them, the said Beverly Chew and Richard Relfe: Now, therefore, know ye that I, John K. Walker, sheriff as aforesaid, for and in consideration of the sum of four hundred and eighty dollars, to me in hand paid by the said Beverly Chew and Richard Relfe, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law I do hereby transfer and assign to them, the said Beverly Chew and Richard Relfe, all the right, title, interest, estate, and property of him, the said Samuel Hammond, in and to the above-described tracts of land and town lots *the* I might sell agreeably to law as sheriff as aforesaid by virtue of the aforesaid writ of execution and advertisement; to have and to hold said tracts of land and town lots to them, the said Beverly Chew and Richard Relfe, and to their heirs and assigns forever.

In witness whereof I, John K. Walker, sheriff of the county of St Louis, have hereunto set my hand and seal this fourth day of November, eighteen hundred and twenty-three.

JOHN K. WALKER, *Sheriff.* [SEAL.]

STATE OF MISSOURI, } *sct:*
Third Judicial District, }

The State of Missouri to the sheriff of St. Louis county, Greeting:

Whereas Richard Relf, and Beverly Chew, and Mary Clark, at our supreme court for the third judicial district, before our judges thereof, recovered against Samuel Hammond the sum of six thousand eight hundred and seventy-seven dollars forty-three and a half cents, which to the said Relfe, Chew, and Clark was adjudged for their damages, which they sustained as well by reason of the non-performing certain promises and undertakings as for their costs and charges by them about their suit in this behalf expended, as appears to us of record: These are therefore to command you, as we have heretofore commanded you, that of the goods and chattels, lands and tenements, of the said *the* Samuel Hammond you cause to be made the damages and costs aforesaid, and that you have the same before the judges of our said court on the first Monday of November next, to render to the said Relfe, Chew, and Clark the damages and costs aforesaid, and for want of sufficient goods and chattels, lands and tenements, of the said Samuel Hammond whereon to levy and make the same, we command you that you take the said Samuel Hammond, if he be found in your bailiwick, and him safely keep, so that you have his body before the same judges on the said first Monday of November next to satisfy the said Relfe, Chew, and Clark the damages and costs aforesaid, and that you certify to our said judges how you executed this writ, and have you then and there this writ.

Witness Thompson Douglass, clerk of our supreme court for the third judicial district.

In testimony whereof I have hereunto affixed my name and seal of office, at office, in the city of St. Louis, this 28th day of May, in the year of our Lord one thousand eight hundred and twenty-three, and of the Independence of the United States of America the forty-seventh.

[SEAL.] TH. DOUGLASS, *Clerk.*

The above is a true copy of the execution.

JOHN K. WALKER, *Sheriff.*

130 "Sheriff's sale."—By virtue of a writ of execution to me directed from the supreme court for the 3d judicial district, in favor of Richard Relfe, Beverly Chew, and Mary Clark against Samuel Hammond, I have levied upon and will sell to the highest — for cash, at the court-house door in the city of St. Louis, on Wednesday, the 8th day of October next, between the hours of 9 and 4, all the right, title, estate, and property of said Hammond in and to a tract of land situated in the prairie near the late residence of

John B. N. Smith, containing 2½ arpens in front by 40 arpens deep. Also 240 arpens of land west of St. Louis, bounded south by land of Gratiott and Phillipson, west by land of Cabanne, and east by land of Stokes and others. Also a lot of ground and house in St. Louis, called the Yellow house, bounded east by 3rd street, south by a cross-street, west by a lot of the estate of Irvin, and north by a lot heretofore the property of Col. Easton. Also one other lot, with a brick house thereon, situated on Third street, bounded west by said 3d street, south by South D street. Also two lots on the hill in St. Louis, near the late residence of Moses Scott. Also a lot of ground, with a two-story white house thereon, in St. Louis, bounded west by Church street, south and east by a lot of Daniel Freeman. Lastly, a vacant lot bounded west by Church street, north by South C street, and south by the lot last above mentioned. The extent, &c., of said lots will be given on the day of sale. Sold to satisfy said execution and costs.

St. Louis, September 5th, 1823.

JOHN K. WALKER, *Sheriff.*

The above is a true copy of the advertisement.

JOHN K. WALKER, *Sheriff.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this fourth day of November, in the year of our Lord one thousand eight hundred and twenty-three, John K. Walker, sheriff of St. Louis county, personally appeared in open court and acknowledged the execution of the within deed from him as sheriff to Richard Relfe and Beverly Chew, which said acknowledgement was entered on the records of the court of that day.

[SEAL.] Given under my hand and seal of office, at St. Louis, this twenty-seventh day of January, 1824.

ARCHIBALD GAMBLE, *Clerk.*

Recorded this 27th day of January, 1824.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

OFFICE OF RECORDER OF DEEDS.

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of an instrument of writing executed by John K. Walker, sheriff, to Richard Relfe *et al.*, together with the acknowledgment and date of filing and recording thereof, as fully as the same remains of record in my office in Book L, page 481.

[SEAL.] Witness my hand and official seal this 27th day of October, 1879.

C. W. IRWIN, *Recorder.*

131 Also "Exhibit 15," certified copy of the record of acknowledgment of said deed:

Acknowledgment of Sheriff's Deed.

In the Circuit Court of the Third Judicial Circuit, Sitting for the County of St. Louis, October Term, 1823

STATE OF MISSOURI, } ss:
City of St. Louis, County of St. Louis, }

TUESDAY, *November* 4, 1823.

John K. Walker, sheriff of the county of St. Louis, acknowledges here in court the execution of a deed from him as sheriff aforesaid to Richard Relfe and Beverly Chew for the following-described real estate, to wit: First, a tract of land lying in the old common fields of St. Louis, containing two and a half arpens front (eastwardly) by forty arpens deep (more or less), bounded west by land belonging to the estate of Charles Gratiott, the other boundaries of which are to me unknown; second, a tract of land containing two hundred and forty arpens, more or less, bounded on the south by land of Gratiott & Phillipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond's spring; third, a lot of ground in the city of St. Louis, containing sixty-four feet front on Third street by one hundred feet deep (more or less) and bounded on the east by said Third street, on the south by a cross-street called South C street, on the west by a lot belonging to the estate of James Irvin, and on the north by a lot heretofore the property of Col. Rufus Easton, on which lot stands the house known by the name of Hammon's yellow house; fourth, a lot of ground containing twenty-eight feet, English measure, front on Third street by one hundred and fifty feet, French measure, in depth, and bounded on the west by said Third street, on the south by a cross-street called South D, on the east by a lot of Alexander Bellissime, and on the north by a lot of John Beaufitz—on this lot stands a two-story brick house; fifth, two lots of ground situated in St. Louis, containing two hundred and twenty-two feet from east to west by one hundred and fifteen feet from north to south, and bounded on the south by a cross-street called South B street, on the west by Fifth street, on the north by a lot belonging to the estate of William Sullivan, and on the east by Fourth street, and is the same acquired by said Hammond, jointly with Moses Scott, of Auguste Chouteau and wife; sixth, a lot of ground containing twenty feet front by eighty feet deep and bounded on the west by Church street, on the south and east by a lot of Daniel Freeman, and on the north by a lot hereinafter described—on this lot stands a two-story white house; seventh, a vacant lot containing sixty feet front by forty feet deep, French measure, and bounded on the west by Church street, on the north by a cross-street, on the east by a lot heretofore the property of Christian Smith, and on the south by the lot last above described. Sold as the property of Samuel Hammond by virtue of a writ of execution issued from the supreme court of the State of Missouri

in favor of Richard Relfe, Beverly Chew, and Mary Clark against said Samuel Hammond, and was purchased by the said Richard Relfe, Beverly Chew, they being the highest and last bidder for the same, at the price and sum of four hundred and eighty dollars.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Philip H. Zepp, clerk of the circuit court, city of St. Louis (formerly circuit court of St. Louis county), do hereby certify that the above and foregoing contains a full, true, and complete copy of the record entry of the acknowledgment of a certain deed exe-
132 cuted by John K. Walker, sheriff of the county of St. Louis, to Richard Relfe, Beverly Chew, on November 4th, 1823, as fully as the same appears of record in Record Book No. 3, at pages 299 and following, of the said circuit court in my office.

In testimony whereof I hereunto set my hand and affix
[SEAL.] the seal of said court, at office, in the city of St. Louis, this 1st day of May, 1888.

PHILLIP H. ZEPP, *Clerk.*

Also "Exhibit 16," record of judgment of Relfe and Chew against Samuel Hammond and the execution and return thereof:

Record of Judgment, &c., Relfe and Chew vs. S. Hammond.

Writ of error.

TERRITORY OF MISSOURI, } ss:
Northern Circuit, }

The United States of America to the judge of the circuit court of the northern circuit, Greeting:

Forasmuch as in the record and process and also in the rendition of judgment in a certain plaint which was in our circuit court of our county of St. Louis, in the northern circuit, before you, by our writ, between Richard Relfe, Beverly Chew, and Mary Clark, plaintiffs, against Samuel Hammond, defendant, in a plea of trespass on the case, as it is said, manifest error hath happened, to the great damage of the said Samuel Hammond, as by his complaint we are informed, and being willing that the error aforesaid, if any there be, should be duly amended and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be thereupon given, then you certify and send to our judges of our superior court of the Territory of Missouri for the northern
133 circuit, at the town of St. Louis, on the fourth Monday in April next, a transcript of the record of the judgment aforesaid and this writ, so that our judges aforesaid, inspecting the record of the said judgment, may cause to be done therein for correcting said error what to them of right and according to law shall seem meet to be done.

holden at St. Louis, on the first Monday in May next, to hear the record and proceedings aforesaid, if they shall think fit, and *and* further to do and receive what our said court shall then and there consider concerning them in this behalf, and have you then and there the names of those by whom you shall give them notice and this writ.

Witness Arthur Nelson, clerk of the supreme court for the third judicial district.

In testimony whereof I have hereunto affixed my seal of office, at office, in St. Louis, this fifteenth day of February,
137 [L. S.] eighteen hundred and twenty-two, and of the Independence of the United States of America the forty-sixth.

A. NELSON, *Clk.*

Sheriff's Return.

None of the within-named defendants found in my county. 15th April, 1822.

JNO. K. WALKER, *Sheriff.*

Transcript of the Record.

TERRITORY OF MISSOURI, }
County of St. Louis. }

Pleas begun and held in the circuit court of the Territory of Missouri on the first Monday of April, in the year of our Lord one thousand eight hundred and nineteen, before the Honorable Nathaniel Beverly Tucker, judge of said circuit.

Be it remembered that heretofore, to wit, on the twelfth day of March, in the year aforesaid, Richard Relfe, Beverly Chew, and Mary Clark, by Thomas H. Benton, Esq., their attorney, filed in the office of the clerk of the said circuit court their declaration against Samuel Hammond; which said declaration is in the words and figures following to wit:

In the St. Louis Circuit Court, at April Term, 1819.

Richard Relfe, Beverly Chew, and Mary Clark, by Benton, their attorney, complain of Samuel Hammond of a plea of trespass upon the case, for that whereas the said Samuel heretofore, to wit, on the 10th day of September, in the year one thousand eight hundred and seventeen, at St. Louis aforesaid, was indebted to the said plaintiffs in the sum of seven thousand five hundred dollars, lawful money of the United States, for so much money by the said Samuel Hammond before that time had and received to the use of the plaintiffs, and, being so indebted, he, the said Samuel Ham-
138 mond, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at St. Louis aforesaid, undertook then and there — faithfully promised the said plaintiffs to pay them the said sum of money when he, the said Samuel, should be thereto

afterwards requested. Nevertheless the said Samuel Hammond, — his said several promises and undertakings, but contriving and fraudulently intended craftily and subtily to deceive and defraud the said plaintiffs in this behalf, hath not as yet paid the said sum of money or any part thereof to the said plaintiffs, although he, the said Samuel, afterwards, to wit, on the said 10th day of September, in the year one thousand eight hundred and seventeen, at St. Louis aforesaid, was requested by the said plaintiffs so to do. But the said Samuel to pay the same hath hitherto refused and still does refuse, to the damage of the plaintiffs of seven thousand five hundred dollars, and therefore they sue.

BENTON, *For Pl'ffs.*

And afterwards, to wit, on the tenth day of the filing of the said declaration, our said clerk endorsed thereon a writ of summons, which writ is in the words following, to wit:

TERRITORY OF MISSOURI, }
County of St. Louis. }

The United States of America to the sheriff of St. Louis county, Greeting:

We command you to summon Samuel Hammond that he be and appear before the judge of our circuit court at the next term thereof, to be held at the town of St. Louis, within and for the county of St. Louis, on the first Monday of April next, then and there to answer unto Richard Relfe, Beverly Chew, and Mary Clark of a plea of trespass on the case, to the damage of the plaintiffs of seven thousand five hundred dollars, and have you then and there this writ.

139 Witness Archibald Gamble, clerk of our said court, at office, this twelfth day of March, eighteen hundred and nineteen, and of our Independence the forty-third.

[SEAL.]

A. GAMBLE, *Clerk.*

And on the return day of said writ, to wit, on the first Monday of April, in the year aforesaid, the sheriff to whom the same was directed, to wit, Joseph C. Brown, sheriff of St. Louis county, returned the same, with his return thereon endorsed as follows, to wit:

Executed this writ by leaving a copy with the clerk at the house of defendants on or before the 15th March, 1819, in the town of St. Louis.

JOS. C. BROWN, *Sheriff.*

And before the issuing of said writ the plaintiffs filed their bond as security for costs in the words following, to wit:

I, Thomas H. Benton, of St. Louis, do acknowledge myself bound to Samuel Hammond in the sum of five hundred dollars, to be void on condition that the plaintiff- in the foregoing suit shall prosecute

the same to effect against the said Samuel Hammond, or, failing therein, shall pay all costs accruing in consequence thereof.

Witness my hand and seal March 9th, 1819.

THOMAS H. BENTON. [SEAL.]

On which said first Monday in April, in the year aforesaid, the defendant, by his attorney, files his plea and notice of set-off in the words following, to wit:

And the said Samuel Hammond, by Pettibone, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in declaring have above thereof alleged against
140 him, and of this he puts himself upon the country, &c., and the plaintiff- doth the like.

BENTON, *Attorney.*

Take notice that the above-named defendant will, on the trial of this cause, give in evidence and insist, according to the form of the statute in such case made and provided, that the plaintiffs were before and at the time of the commencement of this suit and still are indebted to the said defendant in a large sum of money, to wit, in the sum of two thousand dollars, for the work and labor, care, and diligence of the said defendant by the said defendant before that time performed, bestowed, and rendered in and about the business of the said plaintiffs at their special instance and request, and for other work and labor of the said defendant, as the agent of the said plaintiff-, in the sale and disposal of certain lands of the said plaintiffs, in drawing conveyances, in receiving and transmitting moneys to and for them before that time done and performed by the said defendant to and for them, said plaintiffs, at their like request, which said sum of two thousand dollars the said defendants will set off against any demand of the said plaintiffs to be proved on the said trial or so much thereof as will be sufficient to answer and satisfy such demand, and the balance of the said sum, if any, he will pray to have certified in his favor.

PETTIBONE,
Att'y for Def't.

To attorneys for plaintiffs.

Thereupon this cause is continued until the next term of this court, at which said term, to wit:

141 On the first Monday in August, in the year eighteen hundred and nineteen, come the parties aforesaid, by their respective attorneys aforesaid, and, neither of the parties requiring a jury, all and singular the premises are by them submitted to the court, which being seen and heard by the court here fully understood, the court do find, as to the issues within joined between the parties aforesaid, that the said Samuel did undertake and promise in manner and form as the said plaintiffs in declaring have above thereof alleged against him, and they assess the damages of the said Richard, Beverly, and Mary by them sustained by reason of the

non-performance of the premises and undertakings in the declaration mentioned to six thousand eight hundred and forty-one dollars and eighty and one-half cents; therefore it is considered that the said Richard Relfe, Beverly Chew, and Mary Clark recover against the said Samuel Hammond their damages aforesaid in form aforesaid by the court assessed, together with their costs and charges by them about their suit in this behalf expended, and that they have thereof execution; to which foregoing judgment the defendant, by his attorney aforesaid, excepts and files his bill of exceptions in the words following to wit: The plaintiff proved that the money had been received by the defendant on sale of lands belonging to the estate of Daniel Clark, deceased, which sale the said defendant had been authorized to make by a power of attorney from the said Relfe and Chew, executors of the said Daniel Clark and attorneys-in-fact of the said Mary Clark, sole legatee and heir of the said Daniel Clark, deceased. The defendant gave in evidence a power of attorney from Mary Clark to Richard Relfe and Beverly Chew, which is in the words and figures following: "Know all men by these presents that I, Mary Clark, of Germantown, in the county of Philadelphia and State of Pennsylvania, widow, mother, and sole heir, devisee, and legatee of Daniel Clark, late of the city of New Orleans and State of Louisiana, esquire, deceased, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, and in my place and stead put and depute Beverly Chew and Richard Relfe, of the city of New Orleans, merchants and executors of the last will and testament of the said Daniel Clark, deceased, jointly and severally to be my true and lawful attorney and attorneys for me and in my name, to my use and in my behalf, to take possession of and to hold all and every part and parcel of the real and personal estate of the said deceased; to manage, direct, bargain, agree for, and make sale of the same or any part thereof; to let, lease, rent, or occupy the real estate, and to ask, demand, sue for, and by all lawful ways and means recover and receive of and from all and every person or persons, bodies politic or corporate, whatsoever whom it shall, doth, or may concern all such sum and sums of money, debts, and effects whatsoever and what kind soever as are or may be due, owing, payable, or belonging to me as sole legatee, devisee, or heir-at-law of the said Daniel Clark, deceased, or under or by his last will and testament, whether by mortgage, bond, bill, book, debt, account, contract, covenant, bargain, agreement, or otherwise, by what other reason or means soever, none excepted or reserved, and to that end, with whom it may concern, to settle and adjust all accounts and the balance thereof to receive, and on receipt in the premises to give one or more acquittances and discharges in due form of law; also, for me and in my name and as my act and deed, to make, seal, execute, and deliver such act and acts, deed and deeds, as may be needful or necessary for the conveyance or assurance of any real estate, *as* for the leasing or selling of the same for a term of years or otherwise, *as* for the assignment or conveyance of any estate or effect, real or personal, and if need be to appear before any tribunal, judges and justices in any court or

courts, thereto to do, say, pursue, implead, arrest, attach, and
142 prosecute as occasion shall be and required; also to compound, compromise, conclude and agree for the same or any way or manner respecting the premises, by arbitration or otherwise, as my said attorneys or either of them shall think fit, and generally in the premises to do, execute, and perform all and whatsoever shall be requisite and necessary in as full and ample manner, to all intents and purposes, as I could do if personally present, with power of substitution for all or any of the purposes hereinbefore mentioned and for the revoking of the same, hereby promising to ratify and hold for good and valid all and whatsoever my said attorneys or either of them may lawfully do and cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this first day of October, in the year of our Lord one thousand eight hundred and thirteen.

MARY CLARK. [SEAL.]

Sealed and delivered in the presence of us—
MARY SWEENEY.
THOMAS SPARKWITH.
DANIEL W. COX.

I certify the foregoing to be a true copy of the original act extant in my current register and made of record the twenty-second of April last.

In faith whereof I grant these presents under my signature and the impress of my seal of office, at New Orleans, this ninth day of May, 1817.

[SEAL.] JOHN LYND, *Not. Pub.*

By James Villiere, governor of the State of Louisiana.

These are to certify that John Lynd, whose name is subscribed to the instrument of writing hereunto annexed, was at the time he signed the same and is now a notary public in and for the city of New Orleans; and, further, that the signature on the said instrument is well and truly that of the said John Lynd, duly qualified and commissioned.

[SEAL.] Given under my hand and the seal of the State, at New Orleans this tenth day of May, 1817, and in the forty-first
143 year of the Independence of the United States.

By the governor: JS. VILLERE.

MAZUREAU,
Sec. of State.

Recorded this nineteenth day of September, A. D. 1817.

A. S. McGIRK,
D. Eff. Recorder,
For M. P. LADUC, *Eff. Rec.*

Also a power of attorney from Richard Relfe and Beverly Chew to Samuel Hammond, which is in words and figures following: "By this act of procuration be it known that this day before me, John Lynd, notary public in and for this city, came Richard Relfe and Beverly Chew, executors of the late Daniel Clark and attorneys-in-fact for Mary Clark, sole legatee of the said Daniel Clark, who declare to appoint and in their place and stead put Samuel Hammond, of St. Louis, Louisiana Territory, to be their true and lawful attorney, for them in their names and behalf to locate, survey, and take possession of and sell all or any part or portion of lands claimed or owned by the said Daniel Clark in either the Louisiana or Missouri Territory, and to that end, with whom it may concern, to adjust all disputes or differences with regard to the same, to bargain, agree for, and make sale of any or all or any part of said lands, and to sign, execute, and deliver good and sufficient deeds for the absolute sale and disposal thereof; to appear before all courts of law, there to do and prosecute as occasion shall require, and generally to do and perform whatsoever shall be requisite in as full manner as these constituents could do if personally present; also with the power of substitution and revocation, these constituents hereby agreeing to ratify whatsoever shall be lawfully done by virtue hereof.

This done and passed, at New Orleans, this ninth day of
144 May, one thousand eight — and seventeen in presence of R. Vose Johnson and Moses Cox, witnesses, who hereunto sign their names with the parties and me, notary.

RICHARD RELFE.
BEVERLY CHEW.

R. VOSE JOHNSON.
MOSES COX.

JOHN LYND,
Notary Public.

I certify the foregoing to be a true copy of the original act extant in my current register, in faith whereof I grant these presents under my signature and the impress of my seal of office, at New Orleans, this ninth day of May, 1817.

[SEAL.] JOHN LYND, *Not. Pub.*

Recorded this nineteenth day of September, 1817.

A. S. McGIRK,
D. Eff. Recorder,
For M. P. LADUC,
Eff. Recorder.

From this evidence the defendant contended that the plaintiffs could not recover on the ground that the plaintiffs were not jointly interested in the demand; but the court overruled the objection and gave judgment for the plaintiffs; to which opinion the defendant excepts and prays the court to sign and seal this bill of exceptions, which is done.

N. B. TUCKER. [L. S.]

TERRITORY OF MISSOURI, } ss:
County of St. Louis, }

I, Archibald Gamble, clerk of the circuit court within and for the county of St. Louis, do certify the foregoing to be a correct transcript of the record and proceedings in the case of Richard Relfe, Beverly Chew, and Mary Clark *vs.* Samuel Hammond.

Given under my hand and seal of office, at St. Louis, this twentieth day of September, eighteen hundred and nineteen.

[SEAL.] ARCH. GAMBLE, *Clerk.*

145 *Assignment of Errors in the Supreme Court.*

Superior Court, Northern Circuit, April Term, 1820.

SAMUEL HAMMOND *vs.* RICHARD RELFE, BEVERLY CHEW, and MARY CLARK. } In Error. Assignment of Errors.

Afterwards, to wit, on the fourth Monday of April, at this same term of April, before the judges of the said superior court of the Territory of Missouri, sitting for the northern circuit at the town of St. Louis, in the county of St. Louis, comes the said Samuel Hammond, by Pettibone, his attorney, and says that in the record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this, to wit, that the declaration aforesaid and the matters and things therein contained were not sufficient in law for the said Richard Belfe, Beverly Chew, and Mary Clark to have and maintain their aforesaid action thereof against the said Samuel Hammond; there is error also in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for said Richard Relfe, Beverly Chew, and Mary Clark against the said Samuel Hammond, whereas by the law of the land the said judgment ought to have been given for the said Samuel Hammond against the said Richard Relfe, Beverly Chew, and Mary Clark; and there is error also in this, to wit, that from the evidence detailed in the bill of exceptions it appears that the plaintiffs were not jointly interested in the demand for which this suit was brought; and the said Samuel Hammond prays that the judgment aforesaid for the errors aforesaid and others errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by the occasion of the said judgment, &c.

PETTIBONE,
Attorney for Pl'ff in Error.

And afterwards the following proceedings were had in said cause, to wit:

NOVEMBER 2ND, 1821.

SAMUEL HAMMOND
vs.
RELFE, CHEW, and CLARK. } In Error.

Continued by consent.

MAY 7TH, 1822.

SAMUEL HAMMOND
vs.
RELFE, CHEW, and CLARK. } In Error.

My. Geyer, attorney for the plaintiff, moved that the defendant be ruled to join in error within four days, or otherwise proceedings will be had *ex parte*.

MAY 8TH, 1822.

SAMUEL HAMMOND
146 *vs.*
RELFE, CHEW, and CLARK. } In Error.

In pursuance of the motion made on yesterday it is ruled that the said defendants join in error within four days. Joinder in error filed on May 8th, 1822, but not entered on the records of this court.

RICHARD RELFE, BEVERLY CHEW, and MARY CLARK
adv.
SAMUEL HAMMOND. } In Error.

And the said defendants in error come and say that there is no error in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, and they pray that the court here may examine the record and proceedings aforesaid as well as the judgment aforesaid and the matters above assigned for error, and that the judgment aforesaid rendered may be affirmed.

BENTON,
Att'y for Def'ts in Error.

MAY 13TH, 1822.

SAMUEL HAMMOND
vs.
RELFE, CHEW, and CLARK. }

The rule entered in this cause on the 8th inst. having expired, the cause is set for argument *ex parte*.

NOVEMBER 6TH, 1822.

RICHARD RELFE and Others
vs.
SAMUEL HAMMOND. } Error from St. Louis Circuit Court.

Now, at this day, come the parties aforesaid, by their respective attorneys, and after hearing the argument of counsel the court, not

being advised what judgment to give of and concerning the premises, take time to consider.

147 NOVEMBER 7TH, 1822.

RICHARD RELFE, BEVERLY CHEW, and MARY CLARK
vs.
SAMUEL HAMMOND.

Now, at this day, come again the parties aforesaid, by their attorneys aforesaid, and the court now here, being fully advised of and concerning the premises, consider that the judgment aforesaid, in form aforesaid rendered, be affirmed and in all things stand in full force and effect; and it is further considered and adjudged by the court that the said Richard Relfe, Beverly Chew, and Mary Clark do recover of the said Samuel Hammond their costs and charges by them about their defense in this behalf expended, and that they have thereof execution.

NOVEMBER 16TH, 1822.

SAMUEL HAMMOND
vs.
RICHARD RELFE and Others.

It is ordered by the court that the motion made by Mr. Benton, being of counsel for the plaintiff in error, for a rehearing in this case be continued until the next term, and that the said defendants in error forbear to take out their execution on the judgment aforesaid until the next term of this court.

MAY 21ST, 1823.

SAMUEL HAMMOND
vs.
RELFE, CHEW, and CLARK. } Error from St. Louis Circuit Court.

(Continued on a motion for a reargument from the last term. Judge Pettibone, having been of counsel in this case, left the bench.)

And now, at this day, come the parties aforesaid, by their respective attorneys aforesaid, and the court, after hearing the reargument of counsel, not being sufficiently advised what judgment to give of and concerning the premises, take time to consider.

MAY 22, 1823.

SAMUEL HAMMOND
vs.
RELFE, CHEW, and CLARK. } Error from St. Louis Circuit Court.

And now, at this day, come the parties aforesaid, by their respective attorneys aforesaid, and the court now here, being sufficiently advised of and concerning the premises, consider that the judgment aforesaid in form rendered be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said Richard Relfe, Beverly Chew, and Mary Clark recover against the said Samuel Hammond their costs and

charges by them about their defense in this behalf expended, and that they have thereof execution.

148 *Execution.*

STATE OF MISSOURI, }
Third Judicial District. }

The State of Missouri to the sheriff of St. Louis county, Greeting:

Whereas Richard Relfe, Beverly Chew, and Mary Clark, at our supreme court for the third judicial district, before our judges thereof, recovered against Samuel Hammond the sum of six thousand eight hundred and seventy-seven dollars and forty-three and a half cents, which to the said Relfe, Chew, and Clark was adjudged for their damages which they sustained as well by reason of the non-performing certain promises and undertakings as for their costs and charges by them about their suit in this behalf expended, as appears to us of record. These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Samuel Hammond you cause to be made the damages and costs aforesaid, and that you have the same before the judges of our said court on the first Monday of November next, to render the said Relfe, Chew, and Clark the damages and costs aforesaid; and for want of sufficient goods and chattels, lands and tenements, of the said Samuel Hammond whereon to levy and make the same, we command you that you take the said Samuel Hammond, if he be found in your bailiwick, and him safely keep, so that you have his body before the same judges on the said first Monday in November next, to satisfy the said Relfe, Chew, and Clark the damages and costs aforesaid, and that you certify to our said judges how you execute this writ, and have you then and there this writ.

Witness Thompson Douglass, clerk of our supreme court for the third judicial district.

In testimony whereof I have hereunto affixed my name and seal of office, at office, in the city of St. Louis, this 28th day of May, in the year of our Lord one thousand eight hundred and twenty-three, and of the Independence of the United States of America the forty-seventh.

[SEAL.] TH. DOUGLASS, *Clk.*

Clerk's Endorsement.

No. 3, November Term, 1823.

RELFE, CHEW, and CLARK *vs.* SAMUEL HAMMOND. } Execution.

Debt	$6,841 80½
Clerk Gamble	9 32
" Garnier	5 50
" Nelson	2 45
" sup. court	4 40

Att'y Benton	$6 00
Writ of execution	3 00
Sheriff Brown	4 96
	$6,877 43½
Ex. and tax	2 00
	$6,879 43½

Interest from August term, 1819.
May 28.

Sheriff's Endorsement.

Rec'v'd May 28, 1823.

JNO. SIMONDS, JR., *D. Sh'ff.*

Sheriff's Return.

Made on this execution by the sale of the property described in the enclosed advertisement the sum of four hundred and eighty dollars, which satisfies of the debt four hundred and twenty-seven dollars and seventy-seven cents, after deducting the costs. Richard Relfe and Beverly Chew were the purchasers, October 8th, 1823. No other property of the defendant being found in my county, I did on the 31st day of October, 1823, take the body of the said Samuel Hammond, and afterwards, on the same day, discharge the same from custody by order of John Mullanphy, the plaintiffs' agent.

$427.77.

JOHN K. WALKER, *Sheriff.*

149 *Sheriff's Advertisement.*

"Sheriff's sale."—By virtue of a writ of execution to me directed from the supreme court for the 3rd judicial district in favor of Richard Relfe, Beverly Chew, and Mary Clark against Samuel Hammond, I have levied upon and will sell for cash to the highest bidder, at the court-house door, in the city of St. Louis, on Wednesday, the 8th day of October next, between the hours of nine and 4, all the right, title, estate, and property of said Hammond in and to a tract of land situated in the prairie near the late residence of John B. N. Smith, containing 2½ arpens front by 40 arpens deep; also 240 arpens of land west of St. Louis, bounded south by land of Gratiott and Phillipson, west by land of Cabanne, and east by land of Stokes and others; also a lot of ground and house in St. Louis called the yellow house, bounded east by Third street, south by a lot heretofore the property of Col. Easton; also one other lot with a brick house thereon situated on 3d street, bounded west by said 3d street, south by South D street; also two lots on the hill in St. Louis near the late residence of Moses Scott; also a lot of ground with a two-story white house thereon in St. Louis, bounded west by Church street, south and east by a lot of Daniel Freeman; lastly, one vacant lot

bounded west by Church street, north by South C street, and south by the lot last above mentioned. The extent, &c., of said lot will be given on the day of sale. Sold to satisfy said execution and costs.

St. Louis, September 5th, 1823.

JOHN K. WALKER, *Sheriff.*

STATE OF MISSOURI, *set:*

I, Henry W. Ewing, clerk of the supreme court of the State
150 of Missouri, do hereby certify that the above and foregoing pages contain a full, true, and complete copy of the transcript and papers on file in my office in the case of Samuel Hammond, plaintiff in error, against Richard Relfe, Beverly Chew, and Mary Clark, defendants in error.

Given under my hand, with the seal of said court affixed, at office, in the city of Jefferson, this 9th day of May, in the year of our Lord one thousand eight hundred and eighty-eight.

[SEAL.]

HENRY W. EWING, *Clerk,*
By ROWAN RAY, *D. C.*

By Mr. JEWETT: We will make our objections to this proof when we come to the argument.

Also "Exhibit 17," letter of attorney by Relf and Chew to John O'Fallon to sell this land, dated October 19th, 1838:

151 *Power of Att'y from Relf & Chew to J. O'Fallon.*

Know all men by these presents that we, Richard Relfe and Beverly Chew, of the city of New Orleans and State of Louisiana, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, J. O'Fallon, Esquire, of St. Louis, State of Missouri, to be our true and lawful attorney, granting unto said attorney full power for us and each of us in our respective names and behalf, and to use, to sell, and in due form of law transfer and convey unto such persons or persons, for such price or prices and on such terms and conditions as our said attorney shall think fit, all or any part or parts of the lands and tenements unto us jointly belonging or possessed by us in the State of Missouri, and the price or prices or proceeds of such contemplated sales to receive, and in our respective names for the same to grant acquittance, and also, for the full execution of the purposes aforesaid, in our names to make, sign, seal, execute, and deliver all acts, deeds, and writings which shall or may be requisite in the premises, with such clauses, conditions, stipulations, warranties, and assurances as our said attorney shall think fit, and generally to do and perform all lawful acts and things whatsoever concerning the premises as fully in every respect as we, the said constituents, or either of us could do if we were personally present, and an attorney or attorneys under him, for the purposes aforesaid, to make and at his pleasure to revoke, hereby ratifying and confirming all and whatsoever our said attorney shall in our

names lawfully do or cause to be done in the premises by virtue of these presents.

In witness whereof we have hereunto set our hands and affixed our respective seals, at New Orleans, on this nineteenth day of October, eighteen hundred and thirty-eight.

RICHARD RELFE. [SEAL.]
BEV. CHEW. [SEAL.]

State of Louisiana, First Judicial District Court.

STATE OF LOUISIANA, }
City of New Orleans, } *ss:*

Be it remembered that on this twenty-fifth day of October, in the year eighteen hundred and thirty-eight, before the Honorable Alex. M. Buchanan, sole judge of the first judicial district court of the State of Louisiana, then actually sitting, being a court of record, personally came Richard Relfe and Beverly Chew, both personally known to said court to be of full age of majority and unmarried, and to be the persons whose names are subscribed to the foregoing instrument of writing, as having executed the same and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

In testimony whereof I, John Lawson Lewis, the clerk of said court, have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this twenty-fifth day of October, in the year one thousand eight hundred and thirty-eight.

[SEAL.] JNO. L. LEWIS, *Clerk.*

Filed for record March 28th, 1840, and recorded April 13th, 1840.

JNO. RULAND, *Recorder.*

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Richard Relfe and Beverly Chew to J. O'Fallon, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book L 2, page 281.

[SEAL.] In witness whereof I have hereunto set my hand
152 and official seal this thirteenth day of April, A. D. 1888.

WM. A. HOBBS, *Recorder.*

By Mr. JEWETT: We object because Relf and Chew had no title to convey to John O'Fallon. I think I had better put in my objections now, so as to have them appear in the record. Our objections to the judgment and to the deed of Relf and Chew by the sheriff, and all that, is this:

The judgment was rendered by the court of common pleas for a

certain sum, six thousand dollars or over, and the costs. Hammond took a writ of error to the supreme court; the supreme court affirmed the judgment, or ordered judgment affirmed, and execution for costs. The execution issued and put in by the defendants here is an execution for debts and costs. We therefore say that the clerk of the supreme court had no right or authority to issue a judgment for a debt which the lower court had passed upon, and the supreme court had taken no notice of at all; that the execution was, therefore, void, for anything except costs. It was a mere unauthorized act of the clerk, and a further objection is that it appears by the sheriff's return, which they have put in evidence, that he, in the first place, sold a piece of land for something over a hundred dollars, which was more than the costs of the suit for which the execution issued was a legal document; that therefore his levying upon this land, after he had already made a hundred dollars on that execution, more than covering the costs, was without the authority of law; that the supreme court clerk had no right
153 to issue such an execution as that upon a judgment merely or affirmance. For that reason we say the whole proceeding under that execution was null and void. Then we say further that the levy is void because the deed of Easton to Hammond was not acknowledged until one day after the sheriff sold the property, and it was not paid until several days after the sheriff had advertised the property for sale. Therefore, the presumption of law is that the date of delivery is the date of the acknowledgment unless there is proof that the deed was delivered before. We say the proof shows that this deed was made, executed, and delivered on the ninth day of October, one day after the sheriff has sold the land.

Counsel for the defendants also offered in evidence "Exhibit 18," deed of Relf and Chew, by attorney-in-fact, *of* John O'Fallon, to Peter Lindell, dated March 20th, 1840.

154 *Deed.*

Relf & Chew, by att'y,
to
P. Lindell.

Know all men by these presents, that we, Richard Relfe and Beverly Chew, both of the city of New Orleans and State of Louisiana, in consideration of the sum of fifteen hundred dollars to us in hand paid by Peter Lindell, the receipt whereof we do hereby acknowledge, do by these presents grant, remise, release and forever quitclaim unto the said Peter Lindell, all our, and each of our right, title, interest and estate in and to a certain tract of land in St. Louis county, containing two hundred and forty acres, be the same more or less, and described in a deed from John K. Walker, then sheriff, to said Relfe and Chew, bearing date November fourth, eighteen hundred and twenty-three, on record in said county in Book "K" 481 p., as "bounded on the south by land of Gratiott & Philipson,

on the west by land of John P. Cabanne, and on the east by land of William Stokes and others and includes the big spring known by the name of Hammond's spring," and being part of a location of four hundred and eighty acres made by Rufus Easton as the legal representative of Hunot, and more particularly described by reference to the certificates of Joseph C. Brown, formerly sheriff of St. Louis county, recorded in Book K, p. 397, together with all the privileges and appurtenances thereto belonging. To have and to hold the same unto him, the said Peter Lindell, and unto his heirs and assigns forever. And the said Relfe and Chew, for themselves and representatives hereby covenant and agree with the said Lindell, that they will forever warrant and defend the above-granted premises against all persons claiming by through, or under them or either of them but not otherwise.

In testimony whereof we the said Richard Relfe and Beverly Chew have hereunto set our hands and affixed our seals this 20th day of March, eighteen hundred and forty.

RICHARD RELFE, [SEAL.]
By his attorney-in-fact, J. O'FALLON.
BEVERLY CHEW, [SEAL.]
By his attorney-in-fact, J. O'FALLON.

Signed, sealed and delivered in presence of "the interlined."
P. D. TIFFANY.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-seventh day of March, eighteen hundred and forty, before me, a justice of the peace in and for said county, appeared Richard Relfe and Beverly Chew, by John O'Fallon, their attorney-in-fact, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as the attorney-in-fact of the said Richard Relfe and Beverly Chew, and acknowledged the said instrument to be the act and deed of the said Richard Relfe and Beverly Chew for the purposes therein mentioned. Taken and certified the day and year aforesaid.

J. W. WALSH, *Justice.*

155 Filed for record March 28th, 1840, and recorded April 13th, 1840.

JNO. RULAND, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Richard Relfe and Beverly Chew, by att'y, to Peter Lindell, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office, in Book L 2, page 282.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this thirteenth day of April, A. D. 1888.

WM. A. HOBBS, *Recorder.*

Objected to for the same reasons given above.

Counsel for the defendant also offers in evidence "Exhibit 10," deed from Joseph Hunot and wife to Peter Lindell of survey 2500, dated December 5th, 1834.

156 *Deed.*

Jos. Hunot & Wife
to
P. Lindell.

This indenture, made this 5th day of December, in the year of our Lord one thousand eight hundred and thirty-four, by and between Joseph Hunot and Elizabeth Hunot, his wife, of the town of New Madrid and State of Missouri of the one part, and Peter Lindell of the county of St. Louis and State aforesaid of the other part witnesseth, that for and in consideration of the just and full sum of five dollars, good and lawful money of the United States to them in hand paid by the said Peter Lindell, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and do by these presents give, grant, bargain and quitclaim unto the said Peter Lindell, his heirs, assigns forever, all the right, title and interest and claim, be the same more or less, either in law or equity of them, the said Joseph Hunot and wife in and to the following-described tract or parcel of land, (to wit:) situate in the county of St. Louis, State of Missouri, and being four hundred and eighty acres located by virtue of a New Madrid certificate number one hundred and sixty-one in the name of Joseph Hunot or his legal representatives, in township number forty-five, north of the base line of range number seven east of the fifth principal meridian, and being survey number two thousand five hundred, reference to its survey recorded in the surveyor's office in St. Louis, will more fully and at large appear. To have and to hold said tract or parcel of land, with all the rights, privileges and advantages thereunto belonging or in anywise appertaining unto him the said Peter Lindell, and to his heirs and assigns forever free from all and every person or persons claiming the same, through by or under them the said Hunot and wife.

In testimony whereof they, the said Joseph Hunot and Elizabeth Hunot, his wife, have hereunto set their hands and affixed their seals the day and date first above written.

his
JOSEPH x HUNOT. [SEAL.]
mark.

her
ELIZABETH x HUNOT. [SEAL.]
mark.

Signed, sealed and delivered in the presents of
JAMES TANNER
WM. W. HUNTER

STATE OF MISSOURI, } ss:
County of New Madrid, }

Be it remembered that on this sixth day of December, in the year of our Lord one thousand eight hundred and thirty-four, before me, one of the judges of the county court within and for the county of New Madrid, personally came Joseph Hunot and Elizabeth Hunot, his wife, both personally known to me (Richard C. Johnson) to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Elizabeth, being by me first made acquainted with the contents thereof and examined separate and apart from her husband whether she executed the said deed and relinquished her dower to the lands and tenements there mentioned voluntarily, freely and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquished *in* the said land and tenements therein mentioned voluntarily, freely, without compulsion or undue influence of her said husband.

Taken*ed* and certified the — and year aforesaid.

R. C. JOHNSON,
Justice of the County Court.

157 Recorded 22d December, 1834.
ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds, for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by "Joseph Hunot and wife" to "Peter Lindell," together with the acknowledgment and date of recording thereof, as the same remains of record in my office in Book U (original), page 168.

[SEAL.] In witness whereof, I have hereunto set my hand and official seal this thirteenth (13th) day of April, A. D. 1888.
WM. A. HOBBS, *Recorder.*

By Mr. JEWETT: Objected to on the ground that the records show that Joseph Hunot had, in 1810, conveyed all his interest in the New Madrid land, which involved also the New Madrid location of Vandenbenden, and he had nothing to convey.

Counsel for defendants offered in evidence "Exhibit 19," deed from the *court* president and directors of the St. Louis public schools to Peter Lindell, dated August 30th, 1845.

Deed from Public Schools to P. Lindell.

This deed, made this thirtieth day of August, in the year of our Lord one thousand eight hundred and forty-five, witnesseth: that

the board of president and directors of the St. Louis public
158 schools, for and in consideration of the sum of one thousand dollars to them in hand paid before the execution of these presents, by Peter Lindell, of the city of St. Louis, the receipt whereof is hereby acknowledged, have bargained, sold, remised, released, and forever quitclaimed, and by these presents do bargain, sell, remise, release and forever quitclaim, unto the said Peter Lindell, and his heirs the following-described tracts of land, situate, lying and being in the county of St. Louis and State of Missouri, to wit: First: A tract of land containing four hundred and eighty acres, being the tract located under New Madrid certificate number one hundred and sixty-one, in favor of Joseph Hunot or his legal representatives, and being survey number two thousand five hundred, bounded east by surveys for Ann Camp's legal representatives, and for James Conway or his legal representatives, and for Joseph Generoux or his legal representatives, north in part by survey for Francois Delise or his legal representatives and in part by survey for James Conway or his legal representatives west by survey for Charles Roy or his legal representatives, and south by the Cul-de-sac common fields. Second: A tract containing one hundred and seventy acres fourteen hundredths of an acre, being the tract located under the New Madrid certificate number three hundred and forty-eight, in favor of James Conway or his legal representatives, and survey number two thousand seven hundred and twelve, bounded on west and south by the tract first above described, north by survey for Joseph Generoux or his legal representatives east in part by survey for Martin Coontz or
his legal representatives, and in part by the survey of
159 the sixteenth section. Thirdly: A tract of land containing one hundred and seventy acres and fourteen-hundredths of an acre being survey number nine hundred and three, under confirmation in favor of Ann Camp's legal representatives, bounded on the north by the survey of the sixteenth section on the east by the survey of Eustache Peltier or his legal representatives, south, Chouteau's mill tract and by the Cul-de-sac fields and west be the tract first hereinbefore described. To have and to hold the several tracts of land above described to him the said Peter Lindell, and his heirs forever, but with this express understanding that the grantors herein are not in anywise to be responsible for the title of the said property above described, it being the purpose of this conveyance merely to relinquish to the said Peter Lindell any pretention of the board of president and directors of the St. Louis public schools to the said property above described.

In testimony whereof, the president of the board by the order of the board has signed these presents, and caused the seal of the board of president and directors of the St. Louis public schools to be hereto affixed and these presents to be countersigned by the secretary of the board, all done the day and year first hereinbefore mentioned.

N. RANNEY, *Pres't.* [SEAL.]

Attest:

[SEAL.] Z. B. CURTIS, *Secretary.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

160 Be it remembered that on this third day of September, in the year eighteen hundred and forty-five, personally appeared before the undersigned, justice of the county court of St. Louis county, the within-named Nathan Ranney and Zedekiah B. Curtis, who are both personally known to be the persons whose names are subscribed to the within deed to Peter Lindell as parties thereto, and severally acknowledged the same to be their act and deed, hands and seals, for the purposes therein mentioned. Taken and certified the day and year above written.

ARCHIBALD GAMBLE, *Jus. C. C.*

Filed and recorded September 4th, 1845.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by the board of president and directors of St. Louis public schools to Peter Lindell, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book U No. 3, page 52.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this fourth day of November, A. D. 1887.

WM. A. HOBBS, *Recorder.*

Objected to because the public schools had no title at all, they
161 never having had a Government survey of that territory and no title by the act of Congress to them.

Counsel for the defendants also introduced in evidence an act of the legislature of February, 1833, authorizing a conveyance of said land. Found in vol. 2, Laws of Missouri of 1824 to 1836. For reference only.

Also the deposition of witnesses to prove the death of Peter Lindell; also to prove possession and the payment of taxes by Peter Lindell. Filed May 1st, 1888.

162 *Deposition of Robert Baker.*

ROBERT BAKER, being produced, sworn as a witness, as follows:

The plaintiffs being represented by George H. Shields and James M. Lewis and the defendants by Edward C. Smith.

Direct examination.

By Mr. LEWIS:

Q. Please state you- name, age, and residence.

A. My name is Robert Baker. I will be 75 in August. I live in Jackson county, Missouri.

Q. How long have you lived in Jackson county, Missouri?
A. About nine years.
Q. Before coming to Jackson county where did you live?
A. St. Louis.
Q. Did you come from St. Louis?
A. I was travelling around for about two years.
Q. What year was it you began living in St. Louis?
A. In 1845.
Q. Did you know Peter Lindell?
A. Yes, sir.
Q. In what year did Peter Lindell die?
A. In 1861.
Q. Was he ever married?
A. No, sir.
Q. Did he leave any father, mother, brother, or sister?
A. No, sir.
Q. If you know, Mr. Baker, will you please state who were the heirs of Peter Lindell?
A. John Baker, Levin H. Baker, Robert Baker (myself), my sister, Sarah Coleman, wife of Nathan Coleman; my sister, Esther Collins, wife of Monroe R. Collins, Sr.; Peter Lindell, Jr., son of Robert Lindell; Mary D. Patchin, wife of Lyman W. Patchin; Ann Eliza Gordon, wife of Robert C. Gordon; William C. Lindell, and Elizabeth H. McCoombs, who afterwards married Logan D.
163 Dameron.
Q. Who was Elizabeth H. McCoombs?
A. She was a grandniece of Peter Lindell, being the daughter of John McCoombs, who was a nephew of Peter Lindell. John McCoombs was a son of Peter Lindell's sister, Elizabeth McCoombs; both John McCoombs and his mother had died before Lindell, Sr., died. Peter, Jr., and Mar- Patchin and Ann Eliza Gordon and William C. Lindell were the sole surviving children of Robert Lindell, who had died before Peter Lindell, Sr., died.
Q. What business was Peter Lindell, Sr., engaged in at the time of his death?
A. Not any.
Q. Did you know of a tract of land lying in the suburbs of the city of St. Louis which was owned and occupied and cultivated by Peter Lindell, Sr., and known as the Lindell farm?
A. Yes, sir.
Q. How was it bounded?
A. It was bounded as follows: Beginning at a point, the intersection of Garrison and Laclede avenues, thence west by Laclede Ave., thence south by Vandeventer Ave., thence west by Bates Ave. to Kings highway, thence north by Kings highway to Olive street, thence east by Olive street to Taylor Ave., thence south by Taylor Ave. to McPherson Ave., thence east by McPherson Ave. till it intersects Lindell Ave., thence east by Lindell Ave. till it strikes Olive, thence east by Olive to Channing Ave., thence south by Channing Ave. to Pine, thence east to Garrison, thence by Garrison to point of beginning.

Q. Did the tract known as Peter Lindell's, which you have just described, include the Hunot tract or the U. S. survey number 2500?

A. Yes, sir.

164 Q. Well, was that farm of Peter Lindell's, Sr., fenced in all around?

A. Yes, sir.

Q. Was it fenced in 1845?

A. Yes, sir.

Q. Put up before Peter Lindell's death?

A. Yes, sir.

Q. What business were you engaged in from 1845 to 1861?

A. I was engaged in attending to his property on the farm and also the city property owned by him.

Q. That is, Peter Lindell's farm?

A. Yes, sir.

Q. What were your duties?

A. They were raising stock, farming, and sometimes buying horses and cattle for pasture; we took a great many from the city to pasture.

Q. Did you pay the taxes upon this property?

A. My brother attended to the office-work and I the outside work. I attended to all the outside buildings. I know that the taxes were paid by Peter Lindell, Sr.

Q. Do you know that the fences were kept up around that farm continually—I mean Peter Lindell's farm?

A. Yes, sir.

Q. During that time was it cultivated or used as a pasture?

A. It was used as a pasture and a part cultivated, and a part of it was in brush, and it was under my management as agent of Peter Lindell, Sr., from 1845 to 1861.

Q. Were you in possession at that time?

A. Yes, sir.

Q. Were you in continual possession?

A. Yes, sir.

Q. Who claimed this as his property?

A. Peter Lindell, Sr.

Q. You know to your certain knowledge that Peter Lindell paid the taxes upon that property?

A. Yes, sir; I saw the receipts every year.

Q. Do you know about the partition of this farm among

165 Peter Lindell's heirs after his death?

A. Yes, sir.

Q. Who were the commissioners?

A. William H. Clark, Chas. Peck, Chas. K. Dickson, and James Swearingen.

Q. Did you see the plats made by the commissioners of that property, including that portion known as Peter Lindell's second addition?

A. Yes, sir.

Q. Do you know lot 48—that is, in Peter Lindell's second addition—

containing 11.41 acres, bound in on the south by Berlin Ave., west by Lake avenue, east by Taylor avenue, north by lot hereinafter described, with part of survey #3340, containing about 170 feet, fronting on Lake avenue (now Lay avenue), east on McPherson avenue, of about 1,015 feet, north by McPherson Ave., west by Lake avenue, south by the tract before described and E. Schultz *et al.?*

A. Yes, sir.

Q. To whom was this particular tract allotted?

A. Ann Eliza Gordon.

Q. Do you remember lot 52—that is, part of lot 52—in Peter Lindell's second addition, and described as follows: U. S. survey No. 2500, beginning at a point in the south line on Barker avenue, 588 10¼ east on the east line of Lake avenue, thence west on south line of Baker avenue to the east line of Lake avenue, thence south along said Lake avenue 163 feet 6½ inches, thence northeasterly 607 feet 3 in. to the beginning?

A. Yes, sir.

Q. To whom was this particular picce allotted?

A. Esther Baker Collins, the wife of Monroe R. Collins, Sr.

Q. Do you know the location of lot No. 60 of Peter Lindell's second addition to the city of St. Louis, containing $16\frac{5}{100}$ acres, more or less, bounded on the north by McPherson's Ave and lot 166 No. 61 of said addition, east by Lake avenue and said lot 61, south by Berlin Ave., and west by Kings highway; also lot 61, in Peter Lindell's second addition to the city of St. Louis, bounded on the north by McPherson Ave., on which it fronts $67\frac{1}{12}$, east by Lake avenue, on which it fronts $185\frac{5}{12}$?

A. Yes, sir.

Q. To whom was that particular piece allotted in this partition?

A. Robert Baker, myself.

Q. Do you know the location of lot 46, that is bounded on the north by Maryland avenue, east by Cornelia, south by Lindell, west by Taylor avenue? To whom was this particular piece allotted?

A. Yes, sir; to Elizabeth H. McCombs.

Q. Whose daughter was she?

A. Daughter of John McCombs.

Q. What relation to Peter Lindell, Sr.?

A. A grandniece, who subsequently married Logan D. Dameron.

Q. After the partition of this property did each of the respective heirs whom you have just recalled go into possession of this property and fence it in?

A. Yes, sir.

Q. When was it fenced?

A. It was fenced about 1863.

Q. Did this fence remain there up to the time you left St. Louis, in 1879?

A. I left there in 1877. I was not living anywhere at that time; was travelling round. In 1879 I located in Kansas City.

Q. Were the fences kept up until you left there?

A. Yes, sir.

Q. Did the heirs who took possession pay the taxes?
A. Yes, sir; each one paid his own taxes.
Q. According to his holding?
A. Yes, sir.
Q. You said that lots 60 and 61 in the partition were partitioned to you?
A. Yes, sir.
167 Q. Will you please state whether you had possession of them after that partition was made; and, if so, how?
A. I had possession of them after I left St. Louis and cultivated it and built a little house on it, but rented out the house and cultivated the ground.
Q. Were these two lots separately fenced in?
A. No, sir.
Q. There was no separate fence between the two lots?
A. No, sir; they were all under one fence.
Q. Did you pay the taxes on those lots from the time they were assigned to you up to the time you sold them?
A. Yes, sir.
Q. When did you sell them?
A. I did not sell them at all. I gave them as security to the Fourth National bank and I paid the taxes up to the time I left there.
Q. In 1877?
A. Yes, sir.
Q. The fences were kept up during the whole of that time?
A. Yes, sir.
Q. And up to that time the property had been enclosed by a fence, which included Peter Lindell's farm?
A. Yes, sir. The farm was under one fence in 1845, and continued under fence until it was divided, and then the heirs all fenced up their portion separately.
Q. Who acted as agents for the heirs after this partition of property—different parties?
A. Yes, sir. Each one took possession of his own and had his own agent. I acted as my own agent. My son-in-law, Thomas Hunnington, acted a part of the time for me and a part of the time for L. H. Baker, John Baker, and L. D. Dameron, and a part of the time for Monroe Collins, Sr.
168 Q. Do you know of any other heirs, except the parties whom you have mentioned, as the heirs of Peter Lindell, deceased?
A. No, sir.
Q. I suppose you would have known if there had been any others?
A. Yes, sir.
Q. All of the heirs of Peter Lindell were named in that partition suit?
A. Yes, sir.
Q. Recurring to the lots, 60 and 61, which were apportioned to

you, please state whether or not this land was sold out under the deed of trust which you gave to the Fourth National bank.

A. I do not know. I think it was. I heard it was. I think they notified me it was sold out for $8,000 and over.

Q. Do you of your own knowledge know whether it was sold out at all?

A. I do not.

Q. I have read you the description of lot 52. Do you know whether that property was included in the tract of land known as the Peter Lindell farm?

A. Yes, sir; it was.

Q. Did Peter Lindell claim this particular piece, already described, at the time you acted as his agent from 1845 to 1861?

A. Yes, sir.

Q. And you know that after the partition Esther Collins, one of the heirs, took possession of that part and fenced it in?

A. Yes, sir.

Q. State whether or not these heirs of Peter Lindell, after the partition, took possession of their respective portion, as assigned to them by the commissioners, already named, claiming the same by virtue of the partition proceedings.

A. Yes, sir.

Cross-examination.

By EDWARD C. SMITH:

169 Q. Mr. Baker, you have testified that you cultivated lots 60 and 61 and built a small house on it. Did you cultivate it yourself or by tenants?

A. I had it done by a man that I hired.

Q. At the time of the opening of this suit, in 1874, were you living on that lot?

A. No, sir; I never lived on it.

Q. Did you have a tenant on it at that time?

A. I did.

Q. Was he a white man or a colored man?

A. He was a colored man.

Q. Do you remember his name?

A. I think not.

Q. Do you know a colored man named Frank Harris?

A. I do not think I do. This man there got a fish bone in his throat and died of hemorrhage.

Q. Was Frank Harris living on that lot in 1874?

A. I do not recollect what his name was.

Q. You had a colored man living there, but you do not remember his name?

A. No, sir.

Q. Were you served in 1874 with a suit brought by the Hammond heirs?

A. I do not recollect whether I was served then or not.

Q. Were you served at any time?

A. Yes, sir.
Q. Did you employ an attorney to defend you?
A. Yes, sir.
Q. Who was the attorney?
A. Britton A. Hill.
Q. Were the tenants served on lots 60 and 61 in ejectment by the Hammond heirs?
A. I do not know.
Q. The tenant which you spoke of, who had a fish bone in his throat and died, where did he die?
A. Just across the street from where he lived. He was in Gordon's property at the time he died and cultivated some property there.
Q. And he died on Gordon's ground?
170 A. Yes, sir. He started for the house, but fell and died before he got there.
Q. In what year?
A. I cannot recollect.
Q. When did you build this small house on your ground?
A. Directly after the division. I cannot recollect the exact time.
Q. Did you have more than one tenant on it?
A. Living in the house I had one tenant, with a small garden around it.
Q. What was his name?
A. I do not know.
Q. Did you have any other parties on it?
A. I had three tenants on it. One was a negro. He stole some chickens from us.
Q. Did you have any other negro tenant on that place?
A. I had two.
Q. Do you remember the name of either?
A. No, sir; I forget both of them.
Q. Did you employ Hill to defend that suit in ejectment?
A. We all did together.
Q. Were you personally present at the time of the trial?
A. I do not recollect that I was. We never had any trial on our part. It never came up while I was in St. Louis.
Q. Did you and the other Lindell heirs employ Mr. Hill as attorney to attend the suits of ejectment brought by David L. Hammond *et al.* against the survey No. 2500?

Question objected to as irrelevant and immaterial.

A. Each one employed him, and we separately agreed to pay him his fees.
Q. I understood you to say that you had persons living on your lots 60 and 61?
A. Yes, sir.
Q. Was it ever idle?
A. Sometimes. It was idle for a short period of time; probably a month.
171 Q. Did your tenants pay rent?

A. Yes, sir.
Q. Do you know the daughter of William Stokes?
A. No, sir.
Q. Do you know Mrs. Carson, who was formerly Mrs. Smith?
A. No, sir.
Q. Did you know whether or not Peter Lindell, your uncle, made a will?
A. I do not; if he did it has never been found.
Q. Do you remember about what time this deed of trust was given to the Fourth National bank?
A. I do not recollect.
Q. And that deed of trust is recorded in the recorder's office in St. Louis?
A. I suppose so.
Q. Were the facts stated in that deed of trust strictly stated and to the best of your knowledge?
A. I do not know. I could not tell now what is in the deed of trust.

Redirect examination.

By plaintiffs' counsel:

Q. You have stated that you took possession of lot- 60 and 61 under the partition proceedings and fenced them in separately from the other portion of the Lindell property?
A. Yes, sir.
Q. How long after that did you cultivate this land yourself?
A. Well, I cultivated it up to the time I left St. Louis, with the exception of the part I rented out to the gardener. He only stayed one year, and after that I cultivated it myself; had it cultivated in grass, corn, &c.
Q. What did you mean in answer to Mr. Smith's question, stating that you had three tenants on it?
A. Three different times. He asked me how many tenants had been on it from the time it was in my possession, and I told him three.
172 Q. At the time you were cultivating it yourself did you have any tenants on it?
A. Yes, sir; the house was rented.
Q. Did this tenant or any of them rent the whole property from you?
A. I do not recollect. If any one rented it all I do not recollect it.
Q. What portion of the land did you rent out?
A. That portion next the house, with a little ground, not more than 20 or 30 feet; that much I always gave them upon which they had a little garden; at one time there was or may be four or five acres, but I had a gardener, and he cultivated it for me.
Q. Was the gardener white or colored?
A. A white man.

Q. Now, this colored man that stole the chickens what did you do with him?

A. I shipped him.

Q. What rent did you get for the small house?

A. $8 or $10 per month.

Q. The man who got a fish bone in his throat and died was the first tenant?

A. I believe that he was the last I rented it to.

Q. Who was in the house at the time this man died from the fish bone?

A. I do not recollect whether it was a colored man or a white man, but I think it was a colored man.

Q. You stated to Mr. Smith that you did not know Frank Harris?

A. I do not know him.

Q. Did you ever rent the house or any part of the property of lots 60 and 61 to a man named Frank Harris?

—. I do not know if I did.

Q. At the time suit was brought in case of ejectment against Frank Harris by Hammond and J. L. D. Morrison did you
173 receive any notice from him of that suit?

A. No, sir.

Q. Did you receive notice from any one of the suit?

A. Not that I know of. I do not recollect.

Q. You said that one of your tenants was a negro and was caught stealing chickens. Did he continue your tenant after that time?

A. No, sir.

Q. He was not the last tenant you had there?

A. No, sir.

Q. Did you ever employ Hill to defend the ejectment suit brought by Hammond and Morrison against Frank Harris?

A. Hill was employed to attend both suits in connection.

Q. Now please state what two suits you refer to.

A. The Jewett suit, which was called the New Madrid claim.

Q. Did you at any time employ Hill to defend the suit brought against Frank Harris as attorney or in any other suit?

A. No, sir.

Q. Did you at any time ever tell him that the suit was brought against Frank Harris as tenant on your property?

A. No, sir.

Q. Smith asked you if Peter Lindell made a will and your answer was that you did not know; it never was found if he did. Was search made for the will at the time?

A. Yes, sir.

Q. Was there any will of Peter Lindell's probated?

A. Not to my knowledge.

Q. Do you know how it was that Morrison and Hammond obtained possession of lots 60 and 61?

A. No, sir; I do not know anything about how they obtained possession. They did not get them until after I left there.

Recross-examination:

Q. When did you leave St. Louis?
A. In 1877 or 1878, but I think it was in 1877.
Q. How long have you lived in this place?
174 A. I have lived here since 1879.

Signature waived by agreement of counsel, who were present.

Mr. JEWETT: We object for the reason that the depositions don't prove any such thing by any knowledge that the man had here that he was authorized to swear to; it was a mere report.

It is admitted that Peter Lindell died in 1861 intestate and possessed of the land in controversy; that whatever title Peter Lindell had, if any, passed by inheritance and partition among the heirs to Elizabeth H. McCombs, grandniece of Peter Lindell, and afterwards passed to Logan D. Dameron, and that the possession was continuous from Peter Lindell to Logan D. Dameron and by Logan D. Dameron until the title passed out of him.

The court here took a recess until 2 o'clock p. m.

2 p. m.—The trial of this cause progressed as follows:

By Mr. JEWETT: I want to dismiss as to Samuel E. Hammond and Sarah G. Hammond, both of whom are dead, and the title has passed from them, and as to E. H. Hesse, curator, because the children are named in the suit.

Dismissed as to Certain Parties.

MONDAY, *October* 21*st*, 1889.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

On motion of D. T. Jewett, Esq., attorney for plaintiffs herein, it is ordered by the court that this cause be dismissed as to the plaintiffs Samuel E. Hammond, Sarah G. Hammond, and E. H. Hesse, curator.

175 Counsel for the defendants introduced in evidence deed from Logan D. Dameron and wife to Willis M. Dameron, dated the 2d day of April, 1878; filed and recorded on the 11th day of June, 1878, at 1.04 p. m., in Book 598, page 45, city of St. Louis.

Deed from L. D. Dameron to Wm. M. Dameron.

This deed was made and entered into this second day of April, A. D. eighteen hundred and seventy-eight (1878) by and between Logan D. Dameron and Cornelia Dameron his wife, of St. Louis, Missouri, parties of the first part, and Willis M. Dameron of Lewis county, Missouri, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of five dollars

($5.00) to them paid by the said party of the second part, the receipt of which is hereby acknowledged do by these presents grant bargain and sell, convey and confirm unto the said party of the second part, the following-described real estate situated in the city of St. Louis in the State of Missouri, to wit: All these certain parcels of land being parts of lot eleven of Peter Lindell's second addition to the city of St. Louis as follows, to wit: Beginning at a point on the south line of Lindell avenue, seven hundred and ten feet west of the west line of Grand avenue, thence running westwardly along the south line of Lindell avenue, two hundred and sixty-eight feet six inches (268′ 6″) to the southeast corner of Cabanne street and Lindell avenue being the northwest corner of said lot eleven, thence southwardly along the east line of Cabanne street one hundred and fifty feet two and one-half inches thence east and parallel with Lindell avenue one hundred and ten feet, thence southwardly
176 and parallel with Cabanne street one hundred and fifty feet two and one-half inches, thence east and parallel with Lindell avenue one hundred and ten feet, thence southwardly and parallel with Cabanne street sixty-three feet to an alley, thence eastwardly to a point opposite the point of beginning two hundred and thirteen (213) feet southwardly therefrom and seven hundred and ten feet westwardly from Grand avenue, thence northwardly two hundred and thirteen feet to the point of beginning. The other parcel being at a point in the north line of Baker avenue distant eighty-six feet nine inches from the southwest corner of said lot eleven and being the northeast corner of Cabanne street and Baker avenue, and thence running eastwardly along the north line of Baker avenue two hundred and twenty-five feet, and thence northwardly along the western line of the old city limits of said city of St. Louis two hundred and thirteen feet, thence westwardly and parallel with Baker avenue two hundred and twenty-five feet, thence southwardly two hundred and thirteen feet to the place of beginning. Also a certain parcel of ground situated in the southeast corner of block one hundred and thirty-three (133) and containing twenty-eight feet more or less on the west side of Sixth street, by a depth westwardly of one hundred and twenty-seven feet six (6) inches to an alley, and bounded south by Elm street, north by property conveyed by A. B. Chambers to Jas. D. Bowlin, east by Sixth street and west by an alley. Also a certain piece of ground fronting on the north side of Washington avenue in block five hundred and twenty-two (522) east, beginning at a point in said north line of Washington avenue distant thirty-four feet two inches westward from the southeast corner of said block, and thence
177 running northwardly and parallel with Seventeenth street, one hundred and thirty-two feet two inches to the south line of Christy avenue, thence westwardly forty-one feet three inches, thence southwardly one hundred and thirty-two feet two inches to the north line of Washington Ave., thence eastwardly forty-one feet three inches to the point of beginning. Also a certain parcel of ground in block five hundred and twenty-two (522) east, described as follows, to wit: Beginning at the southeast corner of said block

and thence running westwardly along the north line of Washington avenue, thirty-four feet two inches, thence northwardly parallel with Seventeenth street one hundred and thirty-two feet two inches to the south line of Christy avenue, thence eastwardly along Christy avenue, thirty-four feet more or less to Seventeenth street, thence southwardly along the west line of Seventeenth street one hundred and thirty-four feet more or less to the point of beginning. Also two lots of ground in block six hundred and ninety, conveyed to Elizabeth H. McCombs, afterwards Dameron as one of the heirs of Peter Lindell, deceased, by deed in partition between said heirs dated on or about November tenth, eighteen hundred and sixty-three, and recorded on page 111 of Book 282, and which lots are designated as lots number- nine and ten, each having a front of twenty-two feet ten inches on the east side of Broadway and extending back eastwardly of equal width one hundred and twenty feet more or less to an alley nineteen feet wide. Also those certain three lots of ground designated and known as lots Nos. three, four and five in bl'k twenty-one (21) of the city of St. Louis as laid out in the
178 subdivision of the ground in said block belonging to Peter Lindell at the time of his death by the commissioners who made partition of the real estate of said Lindell at the time of his death among the heirs, each of said lots containing a front of twenty-five feet on the east side of Second street by a depth eastwardly of uniform width eighty-five (85) feet three inches to an alley, and being the same lots conveyed to the said L. D. Dameron as follows, to wit: Lot No. three (3) by Rob't Baker and wife by their deed dated November fifth eighteen hundred and sixty-seven, recorded on page 141 Book 351, and lots numbered four and five by George B. Harper by deed dated October twenty-eighth, eighteen hundred and sixty-five and recorded on page 266 Book 313 of said record. Also block forty-six of Peter Lindell's second addition, bounded north by Maryland avenue, south by Lindell avenue, east by Cornelia avenue and west by Taylor avenue, containing ten and $\frac{492}{1000}$ acres. Also a lot or parcel of land in lot five of Lindell's second addition, beginning at a point in the north line of Laclede avenue, three hundred and forty feet nine inches (340 ft. 9 in.) west of Cabanne street, thence running west three hundred and forty feet nine inches, to a point, thence north parallel to Cabanne street two hundred and twenty-three feet two and ¼ inches, thence east three hundred and forty feet nine inches to lot number four of said addition, thence south to point of beginning. Also all that parcel of ground upon which house number six hundred and twenty-six (626) of Beaumont street is erected and containing a front of twenty-six feet on the east side of said street and running back eastwardly (100 ft.) one hundred feet more or less to a private alley five feet wide, bounded north by Lucas avenue, south by house number six hundred and twenty-four
179 (624) on Beaumont street. Also two (2) lots in Block nineteen hundred and fifty-five which together contain a front on south line of Lindell avenue fifty feet and a depth southwardly of one hundred fifty-five feet seven inches to the alley of said block,

known as lots Nos. thirty-five (35) and thirty-six (36) of block number twelve of Peter Lindell's first addition. To have and to hold the same together with all the rights, immunities, privileges, and appurtenances to the same belonging unto the said party of the second part and to his heirs and assigns forever; the said parties of the first part hereby covenanting that they and their heirs, executors and administrators shall and will warrant and defend the title to the premises unto the said party of the second part and to him and his heirs and assigns forever, against the lawful claims of all persons whomsoever, except as against present incumbrances.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

LOGAN D. DAMERON. [SEAL.]
CORNELIA DAMERON. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this third day of April, A. D. eighteen hundred and seventy-eight, before me, the undersigned, a notary public within and for the city of St. Louis and the State of Missouri, qualified March 9th, 1875, for a term expiring March 16th, 1879, came Logan D. Dameron and Cornelia, his wife, who are
180 personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Cornelia Dameron, wife of Logan D. Dameron, having been by me first made acquainted with the contents of said instrument of writing, acknowledged, on an examination apart from her husband, that she executed the same and relinquished all her right, title, and interest, whether of dower or otherwise, in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In witness whereof I hereunto set my hand and affix*ed* my official seal, at office, in the city of St. Louis, this the third day of April, eighteen hundred and seventy-eight.

Copy of Seal. Thos. Huntington, Notary Public, St. Louis Co., Mo.

THOS. HUNTINGTON,
Notary Public, St. Louis, Mo.

Filed and recorded 11th June, 1878, at 1.04 p. m.

D. H. MACADAM, *Recorder.*

N. B.—The words "Lindell" on line 43, page 45, and "first," on line 5, page 47, of this record are interlined in the original deed.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of

writing executed — Logan D. Dameron and wife to Willis M.
181 Dameron, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book No. 598, page 45.

In witness whereof I have hereunto set my hand and
[SEAL.] official seal this twenty-eighth day of January, A. D. 1889.

WM. A. HOBBS, *Recorder.*

Also deed of trust by Willis M. Dameron and wife and others to the Connecticut Mutual Life Insurance Company, dated the twenty-first day of October, 1878; filed for record January 10th, 1879; recorded in Book 602, page 286.

Trust Deed from W. M. Dameron to Conn. M. L. Ins. Co.

This deed, made and entered into this twenty-first day of October, eighteen hundred and seventy-eight, by and between Willis M. Dameron and Annie M. his wife, of Lewis county, Missouri, parties of the first part, Robert B. Wade and Albert Todd of the city of St. Louis in the State of Missouri parties of the second part and the Connecticut Mutual Life Insurance Company a body corporate of the city of Hartford, in the State of Connecticut, party of the third part, witnesseth: That the said parties of the first part for and in consideration of the debt and trust hereinafter mentioned and created and of the sum of five dollars to them paid by the said parties of the second part, do by these presents grant, bargain, sell and convey unto the said parties of the second part, and to them possession thereof now deliver, the following described and designated pieces, parcels and lots of ground situate in said city of St. Louis, to wit: All of those certain two parcels of land
182 being parts of lot eleven (11) of Peter Lindell's second addition to the city of St. Louis, as follows, to wit: Beginning at a point on south line of Lindell avenue seven hundred and ten (710) feet west of the west line of Grand avenue, thence running westwardly, along the south line of Lindell avenue two hundred and sixty-eight feet six inches (268′ 6″) to the southeast corner of Cabanne street and Lindell avenue, being the northwest corner of said lot eleven (11), thence southwardly along the east line of Cabanne street one hundred and fifty feet two and one half inches, (150′ 2½″), thence east and parallel with Lindell avenue one hundred and ten (110) feet more or less to the northeast corner of lot now or late of Carroll, thence southwardly and parallel with Cabanne street on last line of said Carroll lot sixty-three (63) feet to an alley, thence eastwardly to a point opposite the point of beginning, two hundred and thirteen (213) feet southwardly therefrom and seven hundred and ten (710) feet westwardly from Grand avenue, thence northwardly two hundred and thirteen (213) feet to the point of beginning. The other parcel beginning at a point in the north line of Baker avenue distant eighty-six feet nine inches (86′ 9″) from the southwest corner of said lot eleven, and being the

northeast corner of Cabanne street and Baker avenue, and thence running eastwardly along the north line of Baker avenue two hundred and twenty-five (225) feet, and thence northwardly along the western line of the old city limits of said city of St. Louis, two hundred and thirteen (213) feet, thence westwardly and parallel with Baker avenue two hundred and twenty-five (225) feet, thence southwardly two hundred and thirteen (213) feet to the place of beginning. Also a certain parcel of ground
183 situated in the southeast corner of block one hundred and thirty-three (133) and containing twenty-eight (28) feet more or less, on the west side of Sixth street by a depth westwardly of one hundred and twenty-seven feet six inches (127′ 6″) to an alley, and bounded south by Elm street, north by property conveyed by A. B. Chambers to James B. Bowlin, east by Sixth street and west by an alley. Also a certain piece of ground fronting on the north side of Washington avenue in block five hundred and twenty-two east (522 E.), beginning at a point in said north line of Washington avenue distant thirty-four feet two inches (34′ 2″) westward from the southeast corner of said block, and thence running northwardly and parallel with Seventeenth street one hundred and thirty-two feet two inches (132′ 2″) to the south line of Christy avenue, thence westwardly forty-one feet three inches (41′ 3″), thence southwardly one hundred and thirty-two feet two inches to the line of Washington avenue, and thence eastwardly forty-one feet three inches (41′ 3″) to the point of beginning. Also a certain parcel of ground in block five hundred and twenty-two east (522 E.) described as follows, to wit: Beginning at the southeast corner of said block and thence running westwardly along the north line of Washington avenue, thirty-four feet two inches (34′ 2″), thence northwardly parallel with Seventeenth street, one hundred and thirty-two feet two inches (132′ 2″) to the south line of Christy avenue, thence eastwardly along Christy avenue thirty-four (34) feet more or less to Seventeenth street, thence southwardly along the west line of Seventeenth street, one hundred and thirty-four (134) feet more or less to the point of beginning. Also two lots of ground in block
184 six hundred and ninety (690) conveyed to Elizabeth H. McCombs afterwards Dameron, as one of the heirs of Peter Lindell, deceased, by deed in partition between said heirs dated on or about November tenth, eighteen hundred and sixty-three, and recorded on page 111 of Book 282, and which lots are designated as numbers nine and ten (9 and 10) each having a front of twenty-two feet ten inches (22′ 10″) on the east side of Broadway and extending back eastwardly of equal width one hundred and twenty (120) feet more or less to an alley nineteen (19) feet wide. Also those certain three (3) lots of ground designated and known as lots numbers three, four and five (3, 4 and 5) in block number twenty-one (21) of the city of St. Louis as laid out in the subdivision of the grounds in said block belonging to Peter Lindell at the time of his death, by the commissioners who made the partition of the real estate of said Lindell at the time of his death among the heirs, each of said lots containing a front of twenty-five (25) feet on the east side of Second

street by a depth eastwardly of uniform width eighty-five feet three inches (85′ 3″) to an alley, and being the same lots conveyed to L. D. Dameron, as follows, to wit: Lot number three (3) by Robert Baker and wife, by their deed dated November fifth, eighteen hundred and sixty-seven, recorded on page 141 Book 351, and lots numbered four and five (4 and 5) by George B. Harper, by deed dated October twenty-eighth, eighteen hundred and sixty-five, and recorded in page 266 Book 313 of St. Louis city records of deeds. Also block forty-six (46) of Peter Lindell's second addition, bounded north by Mar-land avenue, south by Lindell avenue, east by Cornelia avenue and west by Taylor avenue, containing ten and four hundred and ninety-two thousandths ($10\frac{492}{1000}$) acres. Also a parcel of land in lot five
185 (5) of Peter Lindell's second addition beginning at a point in the north line of Laclede avenue, three hundred and forty feet nine inches (340′ 9″) west of Cabanne street, thence running west, three hundred and forty feet nine inches (340′ 9″) to a point, thence north parallel to Cabanne street two hundred and twenty-three feet two and one-fourth inches (213′ 2¼″), thence east three hundred and forty feet nine inches (340′ 9″) to lot number four (4) of said addition, thence south to point of beginning. Also all that parcel of ground upon which house number six hundred and twenty-six (626) of Beaumont street is erected, and containing a front of twenty-six (26) feet on east line of said street and running back eastwardly one hundred (100) feet more or less to a private alley five (5) feet wide, bounded north by Lucas avenue south by house number six hundred and twenty-four (624) on Beaumont street. Also two lots in block nineteen hundred and fifty-five (1955), which together contain a front in south line Lindell avenue of fifty (50) feet and a depth southwardly of one hundred and fifty-five feet seven inches (155′ 7″) to the alley of said block and known as lots numbers thirty-five and thirty-six (35 and 36) of block number twelve (12) of Peter Lindell's first addition to St. Louis. To have and to hold the same and all the privileges and appurtenances belonging to the same respectively, unto the said parties of the second part and of their survivor and of the assigns of them and of their survivor. In trust however for the following objects and purposes to wit: To secure the payment of a certain note bearing date the first day of November, eighteen hundred and seventy-eight, made and delivered by the said Willis M. Dameron and Logan D. Dameron, to said
186 third party for the sum of one hundred and ninety-seven thousand and twenty-two and $\frac{24}{100}$ dollars, payable five years after date, with interest thereon at the rate of seven per cent. per annum payable semi-annually at the office of the said third party in said city of Hartford, with interest both on said principal and said semi-annual installments of interest from maturity thereof at the rate of ten per cent. per annum. Also to secure the performance of the following agreements made by the said Willis M. Dameron, with said third party its successors and assigns, to wit: That all taxes and assessments, general and special shall be paid, those now existing, if any, upon, or for account of any of said real estate without delay, and all such hereafter levied or charged within the time re-

quired by law, and that all improvements upon each and every part of said real estate shall be insured and kept insured until said note be fully paid against damage from fire for at least two-thirds of their value, in and by insurance companies satisfactory to said third party its successors and assigns with a provision in each policy, that every loss under its provisions shall be payable to said third party, its successors or assigns, to be applied towards the payment of the claims and demands provided and intended to be provided for by these presents unless otherwise satisfied or towards the repair of the damage by fire if so agreed upon by said first and third parties and their respective heirs, successors and assigns. Also, that each and every part of said real estate shall be kept free from every and all liens, of prior, or superior operation to the lien of these presents, also that in case default be made in the performance of any of said agreements, the said third party,
its successors and assigns may effect such insurance,
187 pay such taxes and assessments and satisfy any such superior or prior lien and for repayment of all moneys expended therefor these presents shall be a security in like manner and with like effect as for the payment of said note. If the said note and the semi-annual interest thereon, be paid as they respectively become due, as aforesaid, and each of said agreements be faithfully kept and performed, then these presents shall become void and the said real estate shall be released from this deed, at the costs of the said parties of the first part. But if default be made in the payment of said note or of any of said interest thereon as and when they respectively become due, or in the performance of any of said agreements, then this deed shall remain in force, and the said parties of the second part and their survivor in person or by attorney empowered therefor, in writing under his hand and seal and duly acknowledged for record may proceed to sell the property hereinbefore described, and any and every part thereof, at public vendue to the highest bidder, at the eastern front of the court-house in said city of St. Louis, for cash, twenty days' public notice of the time, terms and place of sale, and of the property to be sold, having previously been given by advertisement in some newspaper published in said city of St. Louis, in the English language, and upon such sale, shall execute in person or by attorney, as aforesaid empowered, and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof, and the proceeds, of sale receive, out of which shall be paid first, the costs, and expense of executing this trust, including compensation to the trustee, and next, all monies paid for insurance
taxes, assessments and liens, hereinbefore provided for, and
188 interest thereon at the rate of ten per cent. per annum, from the times of their respective payments, and upon the usual vouchers therefor, and next if enough therefor, said note and all interest grown and accrued thereon and not paid and if not enough therefor, then apply what there is towards their payment and in all case said demands be paid and satisfied, then the balance, if any, shall be paid to the said Willis M. Dameron, his heirs, legal representatives or assigns, and the said Willis M. and Logan D. Dameron

and their representatives in the premises shall have the right to make payments toward the payment of said note, from time to time and at all times hereafter from the date hereof, until it and all interest accrued and grown thereon, be paid but not in sums less than five hundred dollars at a time, and upon every such payment upon the principal, the growth of interest upon the sum paid shall cease from the time of its payment, said third party its successors and assigns shall have the control and management of all of said property and the rents accruing from any and every part thereof, may exclusively receive and collect and by such agents and attorneys as considered needful. Said Willis M. Dameron, his heirs and assigns may sell from time to time within said period of five years any and every part and parcel of said property, for such price and on such terms as shall be approved by said third party its successors and assigns. And the proceeds of such sale shall be received by said third party its successors and assigns and the proceeds of such sale shall be received by said third party its successors and assigns and the same shall be realized in cash as fast as the terms thereof will permit, all monies
189 realized from said rents and sales made as aforesaid, shall be appropriated as follows to wit: In payment of the reasonable costs and expenses of executing these presents and of this trust, and of the control and management of said property and the collection of the rents therefrom and of the making of said sales and of the keeping of all improvements in good condition and of all lawful taxes and assessments, general and special, hereinbefore specified, and of keeping up the said insurance unless otherwise done, and of all interest upon said note, as it accrued if not otherwise paid and the balance shall be endorsed upon said note towards payment of the principal provided no payment upon the principal be made for a less sum than five hundred dollars, and provided further that said third party, its successors and assigns shall have the right to have such monies appropriated to such of the foregoing objects, as it and they may from time to time select, but in case of no selection, then they shall be appropriated to the foregoing specified objects or demands, at the time existing and due in full satisfaction thereof, in order of their foregoing statement.

In witness whereof said parties have hereunto set their hands and seals, this twenty-first day of October in the year of our Lord one thousand eight hundred and seventy-eight, the said third party by its attorneys Budd and Wade of said city of St. Louis.

WILLIS M. DAMERON. [SEAL.]
ANNIE M. DAMERON. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
LOGAN D. DAMERON. [SEAL.]

190 STATE OF MISSOURI, } ss:
County of St. Louis, }

Before me, the undersigned, a notary public in and for the said county and State (qualified February 23d, 1877, and whose commis-

sion expires February 23d, 1883), on the second day of December, eighteen hundred and seventy-eight, came Willis M. Dameron and Annie M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

And the said Annie M. Dameron, wife of the said Willis M. Dameron, having been by me first made acquainted with the contents of said instrument, acknowledged, upon an examination separate and apart from her husband, that she executed the same and relinquished her right of dower in the real estate therein described and every right and estate therein freely and without compulsion or undue influence of her husband.

[SEAL.] In witness whereof I hereunto set my hand and official seal this second day of December, 1878.

J. HALDERMAN,
Notary Public, Lewis Co., Mo.

Filed and recorded January 10th, 1879, at 1.44 p. m.
C. W. IRWIN, *Recorder.*

NOTE.—Part of the words "westwardly," on line 32, page
191 286, and "survivor," on line 41, page 287, of this record, are written on erasures in the original deed.

Release of Above Deed of Trust.

The undersigned *cestui que trust.* in the deed of trust recorded in part on this page and executed by Willis M. Dameron and wife acknowledge full satisfaction of said deed of trust, and forever release the property therein conveyed from the encumbrance created thereby.

Witness the signature of the Connecticut Mutual Life Insurance Company, by Budd and Wade, its attorneys-in-fact, by C. P. Budd, of said firm, and the hand and seal of said C. P. Budd, this 2d July, 1880.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By their attorneys-in-fact, BUDD & WADE,
By C. P. BUDD. [SEAL.]

Attest: JAMES P. WILTON,
D'y Recorder.

See power of attorney 535, page 26.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for *for* said city and State, do hereby certify the foregoing to be a true copy of an instrument of *of* writing executed by Willis H. Dameron and wife *et al.* to Con-

necticut Mutual Life Insurance Company's tr's, together with the acknowledgment, date of filing and recording, and marginal release thereof, as the same remains of record in my office in Book
192 602, page 286.

In witness whereof I have hereunto set my hand and
[SEAL.] official seal this the twenty-eighth day of January, A. D. 1889.

WM. A. HOBBS *Recorder.*

Also deed from Willis M. Dameron and wife to the Connecticut Mutual Life Insurance Company, dated June first, 1880, filed and recorded July 2nd, 1880, in Book 633, p. 347:

Deed from W. M. Dameron and Wife to Conn. M. L. Ins. Co.

This deed, made and entered into this twenty-first day of June, eighteen hundred and eighty, by and between Willis M. Dameron and Annie M. his wife of Lewis county, Missouri, parties of the first part, and the Connecticut Mutual Life Insurance Company, a body corporate of Hartford Connecticut, party of the second part, witnesseth: That the said parties of the first part for and in consideration of ten dollars, to them paid by the said party of the second part the receipt of which is hereby acknowledged, and in further consideration of the release of certain indebtedness due the party of the second part herein on the hereinafter-described real estate, do by these presents, grant sell and convey to the said party herein of the second part the following described and designated pieces, parcels and lots of ground situated in the city of St. Louis Missouri, to wit: All those two certain parcels of land being parts of lots eleven (11) of Peter Lindell's second addition to the city of St. Louis as follows, to wit: Beginning at a point on south line of Lindell avenue seven hundred
193 and ten (710) feet west of the west line of Grand avenue, thence running westwardly along the south line of Lindell avenue two hundred and sixty-eight feet six inches (268′ 6″) to the southeast corner of Cabanne street and Lindell avenue, being the northwest corner of said lot eleven (11) thence southwardly along the east line of Cabanne street one hundred and fifty feet two and one-half inches (150′ 2½″) thence east and parallel with Lindell avenue one hundred and ten (110) feet more or less to the northeast corner of lot now or late of Carroll, thence southwardly and parallel with Cabanne street on east line of said Carroll lot sixty-three (63) feet to an alley, thence eastwardly to a point opposite the point of beginning two hundred and thirteen (213) feet southwardly therefrom, and seven hundred and ten (710) feet westwardly from Grand avenue, thence northwardly two hundred and thirteen (213) feet to the point of beginning. The other parcel beginning at a point on the north line of Baker avenue, distant eighty-six feet nine inches (86′ 9″) from the southwest corner of said lot eleven (11) and being the northeast corner of Cabanne street and Baker avenue, thence running eastwardly along the north line of Baker avenue

two hundred and twenty-five (225) feet, thence northwardly along the western line of the old city limits of said city of St. Louis, two hundred and thirteen (213) feet, thence running westwardly and parallel with Baker avenue two hundred and twenty-five (225) feet thence southwardly two hundred and thirteen (213) feet to the place of beginning. Also a certain parcel of ground situated in the southeast corner of block one hundred and thirty-three (133) and containing twenty-eight (28) feet more or less on the west line of
194 Sixth street by a depth westwardly of one hundred and twenty-seven feet six inches (127′ 6″) to an alley and bounded south by Elm street, north by property conveyed by A. B. Chambers to James B. Bowlin, east by Sixth street and west by an alley. Also a certain piece of ground fronting on the north side of Washington avenue in block five hundred and twenty-two east (522 E.) beginning at a point in said north line of Washington avenue distant thirty-four feet two inches (34′ 2″) westward from the southeast corner of said block, and thence running northwardly and parallel with Seventeenth street one hundred and thirty-two feet two inches (132′ 2″) to the south line of Christy avenue, thence westwardly forty-one feet three inches (41′ 3″) thence southwardly one hundred and thirty-two feet two inches (132′ 2″) to the north line of Washington avenue, and thence eastwardly forty-one feet three inches (41′ 3″) to the point of beginning. Also a certain parcel of ground in block five hundred and twenty-two east (522 E.) described as follows, to wit: Beginning at the southeast corner of said block, and thence run-ing westwardly along the north line of Washington avenue thirty-four feet two inches (34′ 2″) thence northwardly parallel with Seventeenth street, one hundred and thirty-two feet two inches (132′ 2″) to the south line of Christy avenue, thence eastwardly along Christy avenue thirty-four (34) feet more or less to Seventeenth street, thence southwardly along the west line of Seventeenth street one hundred and thirty-four (134) feet more or less to the point of beginning. Also two lots of ground in block six hundred and ninety (690) conveyed to Elizabeth H. McCombs, afterwards Dameron, as one of the heirs of Peter Lindell, deceased, by deed in partition between said heirs, dated on or about the tenth day of
November, eighteen hundred and sixty-three and recorded on
195 page 111 Book 282, and which lots are designated as numbers nine and ten (9 and 10) each having a front of twenty-two feet ten inches (22′ 10″) on the east side of Broadway and extending back eastwardly of equal width one hundred and twenty (120) feet more or less to an alley nineteen (19) feet wide. Also those certain three (3) lots of ground designated and known as lots numbers three, four and five (3, 4 and 5) in block number twenty-one (21) of the city of St. Louis, as laid out in the subdivision of the ground in said block belonging to Peter Lindell at the time of his death, by the commissioners who made the partition of the real estate of said Lindell at the time of his death among the heirs, each of said lots containing a front of twenty-five (25) feet on the east side of second street by a depth eastwardly of uniform width of eighty-five feet three inches (85′ 3″) to an alley and being the same

lot conveyed to L. D. Dameron as follows, to wit: Lot number three (3) by Robert Baker and wife by their deed dated the fifth day of November eighteen hundred and sixty-seven, recorded on page 141 of Book 351, and lots numbered four and five (4 and 5) by George B. Harper, by deed dated the twenty-eighth day of October, eighteen hundred and sixty-five, and recorded on page 266, of Book 313, St. Louis city records of deeds. Also block forty-six (46) of Peter Lindell's second addition, bounded north by Maryland avenue, south by Lindell avenue, east by Cornelia avenue and west by Taylor avenue, containing ten and four hundred and ninety-two thousandths (10.492) acres. Also a parcel of land in lot five (5) of Peter Lindell's second addition, beginning at a point in the north line of Laclede avenue, three hundred and forty feet nine inches
196 (340′ 9″) west of Cabanne street, thence running west three hundred and forty feet nine inches (340′ 9″) to a point, thence north parallel with Cabanne street two hundred and twenty-three feet two and one-fourth inches (223′ 2¼″) thence east three hundred and forty feet nine inches (340′ 9″) to lot number four (4) of said addition, thence south to point of beginning. Also all that parcel of ground upon which house number six hundred and twenty-six (626) of Beaumont street is erected, and containing a front of twenty-six (26) feet on east line of said street, and running back eastwardly one hundred (100) feet more or less to a private alley five (5) feet wide bounded north by Lucas avenue, south by house number six hundred and twenty-four (624) on Beaumont street. Also two lots in block nineteen hundred and fifty-five (1955) which together contain a front on south line of Lindell avenue of fifty (50) feet and a depth southwardly of one hundred and fifty-five feet seven inches (155′ 7″) to the alley of said block and known as lots numbers thirty-five and thirty-six (35 and 36) of block number twelve (12) of Peter Lindell's first addition to St. Louis. To have and to hold the same to the said party of the second part its successors and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

W. M. DAMERON. [SEAL.]
A. M. DAMERON. [SEAL.]

STATE OF MISSOURI, } ss:
County of Lewis, }

197 Before me, the undersigned, a notary public in and for the said county and State (qualified 23d of Febr'y, 1877, whose commission expires 23d Feb'y, 1883), on this 21st day of June, eighteen hundred and eighty, came Willis M. Dameron and Annie M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Annie M. Dameron, wife of the said Willis M. Dameron, having been by me first made acquainted with the contents of said instrument, acknowledged, upon an examination separate and apart

from her husband, that she executed the same and relinquished her right of dower in the real estate therein described and every right and estate therein freely and without compulsion or undue influence of her husband.

Copy of Seal. Jacob Halderman, Notary Public, Lewis Co., Mo.

In witness whereof I hereto set my hand and official seal this 21st day of June, 1880.

J. HALDERMAN,
Notary Public.

Filed and recorded July 2d, 1880, at 4.48 p. m.

C. W. IRWIN, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by "Willis M. Dameron and wife" to "The
198 Connecticut Mutual Life Insurance Company," together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book 633, page 347.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 28th day of January, A. D. 1889.

WM. A. HOBBS, *Recorder.*

It is admitted that the whole Hunot survey, 2500, was bounded on the west by land owned by Cabanne, and that the whole survey was bounded on the south by land owned by Gratiott and Phillipson; that the Gratiott tract was survey No. 2037, and that the Phillipson tract was survey No. 1332, and that it was bounded on the east by the Ann Camp tract, survey No. 903, and owned at the time by William Stokes, and that the above boundaries are the boundaries of survey No. 2500 so far as specified in the sheriff's deed.

Counsel for defendants also offered in evidence tax deed from Logan D. Dameron, *to* the collector, — Huntington Smith, executed on May 14th, 1879, and recorded September 2d, 1879, in Book No. 614, page 423:

Tax Deed.

L. D. Dameron } to H. Smith. }

STATE OF MISSOURI, }
City of St. Louis. }

Know all men by these presents, that whereas, at the August term, 1875, of the county court of St. Louis county, a judgment was obtained in said court, in favor of the State of Missouri,
199 against the following-described tracts of land, situated in said county of St. Louis and State of Missouri, viz: The

South pt. of lot 16 of P. Lindell's 2d addition, fronting 175 $\frac{4}{12}$ feet on Lindell avenue by a depth on one side of 260 $\frac{1}{2}$ feet and 217 $\frac{8}{12}$ feet on the other side, for the sum of 9.47 dollars. Also lot 34, P. Lindell's second addition, fronting on Boyle avenue and containing 8.40 acres, for the sum of 43.57 dollars. Also lot 46 P. Lindell's second addition, fronting on Lindell avenue, and containing 10.49 acres, for the sum of 44.52 dollars. Also the east part of lot 55, P. Lindell's second addition, fronting on Laclede avenue, and containing 6.18 acres, for the sum of 17.31 dollars. Also the west part of lot 55, P. Lindell's second addition, fronting on King's highway, and containing 2.58 acres, for the sum of 7.90 dollars. Also lot 63 P. Lindell's second addition, fronting on Olive-street road and containing 7.00 acres, for the sum of 19.64 dollars, being the amount of taxes, penalty interest and costs, assessed upon said tract of lands for the year 1874; and whereas, on the 12th day of October, 1875, Theophile Papin, collector of the revenue of the county aforesaid, by virtue of a special execution issued out of the county court of the county aforesaid dated the 16th day of August A. D. 1875, and to the collector of said county directed, did expose to public sale, at the court-house in the county aforesaid, in conformity with all the requisitions of the statute in such cases made and provided, the tracts of land above described for the satisfaction of the judgment so rendered as aforesaid; and whereas, at the time and place aforesaid, N. D. Allen, of the city of St. Louis and State of Missouri having offered to pay the aforesaid sum of one hundred and
200 forty-two $\frac{41}{100}$ dollars, for all of the tracts of land above described, which was the least quantity bid for, the same was stricken off and sold to him; and whereas the said N. D. Allen, by his endorsement under his hand written on the back of the certificate of purchase to him executed for the whole of the tracts of land so sold, as aforesaid, at the time of said sale, said endorsement bearing date the 5th day of May A. D. 1879, assign the said certificate of purchase to Huntington Smith of the city of St. Louis, State of Missouri. Now therefore, I, M. A. Rosenblatt, collector of the city of St. Louis, for and in consideration of the premises and of the said sum of one hundred and forty-two $\frac{41}{100}$ dollars, to the collector of said county as aforesaid, in hand paid by the said N. D. Allen, at the time of the aforesaid sale, and by virtue of the statute in such cases made and provided have granted, bargained and sold, and by these presents do grant bargain and sell, unto the said Huntington Smith, as assignee of the said N. D. Allen, his heirs and assigns, the above-described tracts of land, viz: The south part of lot 16, P. Lindell's second addition, fronting 175 $\frac{4}{12}$ feet on Lindell avenue, by a depth of 260 $\frac{1}{2}$ feet on one side and 217 $\frac{8}{12}$ feet on the other side. Also lot 34 of P. Lindell's second addition fronting on Boyle avenue and containing 8.40 acres. Also lot 46, of P. Lindell's second addition, fronting on Lindell avenue, and containing 10.49 acres. Also the east part of lot 55, P. Lindell's second addition, fronting on Laclede avenue, and containing 6.18 acres. Also the west part of lot
55, P Lindell's second addition, fronting on King's highway
201 and containing 2.58 acres. Also lot 63, P. Lindell's second

addition, fronting on Olive-street road, and containing 7.00 acres, as hereinbefore described. To have and to hold unto the said Huntington Smith, his heirs and assigns forever, subject however to all the rights of redemption provided by law.

In witness whereof, I, M. A. Rosenblatt collector as aforesaid by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal this 14th day of May, A. D. 1879.

[SEAL.] M. A. ROSENBLATT,
Collector of the City of St. Louis.

STATE OF MISSOURI, }
City of St. Louis, } ss:

I certify that on the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-nine, personally appeared before the undersigned, Richard Walsh, register of the city of St. Louis aforesaid, M. A. Rosenblatt, collector of the said city of St. Louis, who is personally known to me, the said register, to be the identical person whose name is subscribed to the foregoing deed as having executed the same, and acknowledged that he executed said deed for the uses and purposes therein mentioned.

Copy of Seal. The Common Seal of the City of St. Louis.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said city of St. Louis the day and year last above written.

RICH'D WALSH,
202 *Register of the City of St. Louis.*

Filed and recorded September 2d, 1879, at 3.25 p. m.
C. W. IRWIN, *Recorder.*

NOTE.—The figures and words, letters, and name, "79," of $7\frac{99}{100}$ on line 17; "also lot 63, P. Lindell's 2d addition, fronting on Olive," on line 18; "for the sum of $19\frac{64}{100}$ dollars," on lines 18 and 19, and "P" on line 42, page 423, of this record, are written on erasures, and the word "city," on line 27, page 423, of same, is interlined in the original deed.

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Logan D. Dameron *et al.*, by collector, to Huntington Smith, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book 614, page 423.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this twenty-eighth day of January, A. D. 1889.

WM. A. HOBBS, *Recorder.*

Also deed from Logan D. Dameron, by collector, to Huntington Smith (a tax deed), dated 14th of May, 1879; recorded September 9th, 1879, in Book 615, page 464.

203 *Tax Deed.*

L. D. Dameron, by collector,
to
H. Smith.

STATE OF MISSOURI, }
City of St. Louis, } ss:

Know all men by these presents, that whereas at the July term 1876 of the county court of St. Louis county a judgment was obtained in said court in favor of the State of Missouri, against the following-described tracts of land situated in said county of St. Louis and State of Missouri, viz: Lot No. 46, P. Lindell's second addition, fronting on Lindell avenue and containing 10.49 acres for the sum of 409.84 dollars. Also lot 63, P. Lindell's 2d addition, fronting on Olive-street road and containing 7.00 acres, for the sum of 190.74 dollars, and all being assessed for the year 1875, in the name of Logan D. Dameron, amounting in the aggregate *for* the sum of six hundred $\frac{58}{100}$ dollars, being the amount of taxes, penalty interests and costs assessed upon said tract of lands for the year 1875. And whereas on the 6th day of October, 1876, Theophile Papin, collector of the revenue of the county aforesaid, by virtue of a special execution issued out of the county court of the county aforesaid, dated the 24th day of July, A. D. 1876, and to the collector of said county directed did expose to public sale at the courthouse in the county aforesaid in conformity with all the requisitions of the statute in such cases made and provided the tracts of land above described for the satisfaction of the judgment so rendered as aforesaid. And whereas at the time and place aforesaid N. D. Allen of the — of St. Louis and State of Missouri having offered to
204 pay the aforesaid sum of six hundred $\frac{58}{100}$ dollars for all of the tracts of land above described which was the least quantity bid for, the same was stricken off and sold to him. And whereas the said N. D. Allen by his endorsement under his hand written on the back of the certificate of purchase to him executed for the whole of the tract of land so sold as aforesaid at the time of said sale, said endorsement bearing date the 5th day of May, A. D. 1879, assign the said certificate of purchase to Huntington Smith, of the city of St. Louis, State of Missouri. Now therefore I, M. A. Rosenblatt, collector of the city of St. Louis, for and in consideraton of the premises and of the said sum of six hundred $\frac{58}{100}$ dollars, to the collector of said county as aforesaid in hand paid by the said N. D. Allen, at the time of the aforesaid sale and by virtue of the statute in such cases made and provided, have granted, bargained and sold and by these presents do grant, bargain and sell unto the said Huntington Smith as assignee of the said N. D. Allen,

his heirs and assigns the above-described tracts of land, viz: Lot No. 46 of P. Lindell's 2d addition fronting on Laclede avenue, and containing 10.49 acres. Also lot 63, P. Lindell's 2d addition, fronting on Olive-street road and containing 7.00 acres as hereinbefore described. To have and to hold unto the said Huntington Smith, his heirs and assigns forever, subject however to all the rights of redemption provided by law.

In witness whereof, I, M. A. Rosenblatt, collector as aforesaid by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal, this 14th day of May, A. D. 1879.

M. A. ROSENBLATT, [SEAL.]
205 *Collector of the City of St. Louis.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I certify that on the 15th day of May, in the year of our Lord one thousand eight hundred and seventy-nine, personally appeared before the undersigned, Richard Walsh, register of the city of St. Louis aforesaid, M. A. Rosenblatt, collector of the said city of St. Louis, who is personally known to me, the said register, to be the identical person whose name is subscribed to the foregoing deed as having executed the same, and acknowledged that he executed said deed for the uses and purposes therein mentioned.

Copy of Seal. The Common Seal of the City of St. Louis.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said city of St. Louis the day and year last above written.

RICHARD WALSH,
Register of the City of St. Louis.

Filed and recorded Sept. 9th, 1879, at 10.40 a. m.
C. W. IRWIN, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and
206 State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Logan D. Dameron, by coll. to Huntington Smith, together with the acknowledgment and date of filing thereof, as the same remains of record in my office in Book 615, page 464.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this twenty-eighth day of January, A. D. 1889.
WM. A. HOBBS, *Recorder.*

By Mr. JEWETT: The tax deeds are objected to as conveying no title for various reasons, which may be stated when the time comes.

Counsel for defendant also offers in evidence deed from Huntington Smith and wife to the Connecticut Mutual Life Insurance Company, dated June 3d, 1879; filed 26th of November, 1880; recorded in Book 645, page 118.

Deed from H. Smith and Wife to Conn. Mut. L. Ins. Co.

We Huntington Smith and Laura G. his wife of the city of St. Louis, State of Missouri, in consideration of eight hundred and fifty $^{00}_{100}$ dollars, to us paid by the Connecticut Mutual Life Insurance Company of Hartford Connecticut a body corporate, the receipt whereof is hereby acknowledged, do hereby quitclaim and convey to said company, the following real estate situated in the city of St. Louis and State of Missouri, thus described: Lot number forty-six (46) of Peter Lindell's second addition, fronting on Lindell avenue and containing ten and forty-nine one-hundredths ac-es (10.49), the title hereby conveyed being the same acquired
207 by Huntington Smith, through a tax deed dated May 14th, 1879, for the delinquent taxes of 1875, and also a tax deed dated May 14th 1879, for the delinquent taxes of 1874. To have and to hold said above-conveyed real estate to said —— —— heirs and assigns forever.

Witness the hands and seals of said Smith and wife, hereto affixed, this third day of June, 1879.

HUNTINGTON SMITH. [SEAL.]
LAURA G. SMITH. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Benj. F. Gray, Jr., the undersigned, a notary public in and for the city aforesaid, qualified May 18th, 1877, for a term expiring May 15th, 1881, do hereby certify that on this third day of June, 1879, before me came Huntington Smith and Laura G., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Laura G. Smith, having first been by me made acquainted with the contents of the foregoing conveyance, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished all her interest, whether of dower or otherwise, in the property therein mentioned freely and without compulsion or undue influence of her said husband.

Copy of Seal. Benj. F. Gray, Jr., Notary Public, City of St. Louis, Mo.

In testimony whereof I have hereunto set my hand and official seal the
208 day and year last aforesaid.

BENJ. F. GRAY, JR.,
Notary Public, City of St. Louis, Mo.

Filed and recorded November 26th, 1880, at 4.38 p. m.
C. W. IRWIN, *Recorder.*

NOTE.—The words "Life Insurance Company of Hartford, Connecticut, a body corporate," on line 41, page 117 of this record, are interlined in the original deed.

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Huntington Smith and wife to the Connecticut Mutual Life Insurance Company, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book No. 645, page 117.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this sixteenth day of October, A. D. 1888.

WM. A. HOBBS, *Recorder.*

By Mr. JEWETT: I object, because Mr. Huntington Smith had no title to convey.

Counsel for the defendants also offered in evidence tax
209 deed from the State of Missouri to Huntington Smith, by collector, dated September 3d, 1881; recorded September 10th, 1881, Book 662, page 234:

Tax Deed.

State of Missouri, by collector, }
to
Huntington Smith. }

Know all men by these presents: that whereas, at the July term, 1876, of the county court of St. Louis county, as it existed prior to October 20th A. D. 1876, a judgment was obtained in said court in favor of the State of Missouri, against the following-described tract of land situated in said then existing county of St. Louis and State of Missouri, and now situated in the city of St. Louis as it now exists in said State, viz: Lot numbered forty-six (46) of P. Lindell's second (2d) addition, fronting on Lindell avenue and containing ten and forty-nine one-hundredths (10.49) acres, for the sum of four hundred and nine dollars and sixty-four cents (409.64) being the amount of taxes, interest and costs assessed upon said tract of land for the year 1875; and whereas, on the 6th day of October 1876, Theophile Papin, collector of the county aforesaid, by virtue of a special execution, issued out of the county court of the county aforesaid, dated the 24th day of July 1876, and to the collector of said county directed, did expose to public sale at the court-house, in the county aforesaid, in conformity with all the requisitions of the statute in such cases made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid. And whereas, at the time
and place aforesaid N. D. Allen, of the county of St. Louis
210 and State of Missouri, having offered to pay the aforesaid sum of four hundred and nine dollars and sixty-four cents ($409.64) for all of the tract of land above described, which was the least quantity bid for, the same was stricken off and sold to him. And whereas the said N. D. Allen did by his endorsement under his hand, written on the back, of the certificate of purchase to him exe-

cuted for all of the tract of land so sold as aforesaid at the time of said sale, said endorsement bearing date the fifth day of May A. D. 1879, assign the said certificate of purchase to Huntington Smith, of the city of St. Louis and State of Missouri. Now therefore I, Nathaniel C. Hudson, collector of the city of St. Louis, for and in consideration of the premises and of the said sum of four hundred and nine dollars and sixty-four cents ($409.64) to the collector of said county aforesaid in hand paid by the said N. D. Allen, at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained and sold and by these presents do grant, bargain and sell unto the said Huntington Smith as assignee of said N. D. Allen, his heirs and assigns the above-described tract of land viz: Lot numbered forty-six (46) of P. Lindell's second (2d) addition, fronting on Lindell avenue and containing ten and forty-nine one-hundredths (10.49) acres. To have and to hold unto him the said Huntington Smith, his heirs and assigns forever, subject however, to all the rights of redemption provided by law. And this deed being made by me to make perfect and complete an attempted conveyance of said land under said tax sale, here-
211 tofore made by M. A. Rosenblatt, the then collector of the city of St. Louis, by a tax deed to said Smith of date the fourteenth (14th) day of May A. D. 1879, and recorded in the recorder's office of the city of St. Louis in Book 615 at page 464, which was defective and void.

In witness whereof, I, Nathaniel C. Hudson, collector as aforesaid, by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal this 3d day of September A. D. 1881.

NATHANIEL C. HUDSON, [SEAL.]
Collector of the City of St. Louis, Missouri.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I certify that on the third (3d) day of September, in the year of our Lord one thousand eight hundred and eighty-one, personally appeared before the undersigned, Nicholas Berg, register of the city of St. Louis aforesaid, Nathaniel C. Hudson, collector of the said city of St. Louis, who is personally known to me, the said register, to be the identical person whose name is subscribed to the foregoing deed as having executed the same, and acknowledged that he executed said deed for the uses and purposes therein mentioned.

Copy of Seal. The Common Seal of the City of St. Louis.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said city of St. Louis the day and year above written.

212 NICHOLAS BERG,
Register of the City of St. Louis, Missouri.

Filed and recorded September 10th, at 12 m., 1881.
C. W. IRWIN, *Recorder.*

19—937

NOTE.—Part of the word "third" and the figure "(3)," on line 27, page 235 of this record, are written on erasures, and the name "Nicholas Berg," on line 29, same page, interlined in original deed.

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by the State of Missouri *et al.*, by collector, to Huntington Smith, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book 662, page 234.

In witness whereof I have hereunto set my hand and [SEAL.] official seal this twenty-eighth day of January, A. D. 1889.

WM. A. HOBBS, *Recorder.*

Also deed from Huntington Smith and wife to the Connecticut Mutual Life Insurance Company, dated the 6th day of September, 1881, Book 661, page 119.

213 *Deed from H. Smith and Wife to Conn. M. L. Ins. Co.*

This indenture, made on the sixth day of September, A. D. one thousand eight hundred and eighty-one, by and between Huntington Smith, and Laura G. Smith, his wife, of the city of St. Louis and State of Missouri, parties of the first part, and the Connecticut Mutual Life Insurance Company (a corporation) of the city of Hartford, and State of Connecticut, party of the second part, witnesseth: That the said parties of the first part in consideration of the sum of eight hundred and fifty dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, remise, release, and forever quitclaim unto the said party of the second part, the following-described lot tract or parcel of land lying being and situate in the city of St. Louis, and State of Missouri, to wit: Lot number forty-six (46) of P. Lindell's second (2d) addition, fronting on Lindell avenue and containing ten and forty-nine one-hundredths ($10\frac{49}{100}$) acres. To have and to hold the same, with all the rights, immunities, privileges and appurtenances thereto belonging unto the said party of the second part and its successors and assigns forever: so that neither the said parties of the first part, nor their heirs nor any other person or persons for them or in their names or behalf shall or will hereafter claim or demand any right or title to the aforesaid premises or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

214 HUNTINGTON SMITH. [SEAL.]
LAURA G. SMITH. [SEAL.]

Signed, sealed and delivered in the presence of us—

——— ———.
——— ———.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this 7th day of September, A. D. 1881, before the undersigned, notary public within and for the city of St. Louis and State of Missouri, personally came Huntington Smith and Laura G. Smith, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Laura G. Smith, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her husband.

Copy of Seal. Frederick F. Espenschied, Notary Public, City of St. Louis, Mo. Term Expires June 29, 1885.

In testimony whereof I have hereunto set my hand — affixed my official seal, at my office, St. Louis, the day and year first above written.

My term of office as notary public will expire June 29th, 1885.

FREDERICK ESPENSCHIED,
Notary Public.

215 Filed and recorded September 10th, 1881, at 12.00 m.
C. W. IRWIN, *Recorder.*

NOTE.—The words "eighty," on line 17; "city," on lines 18, 19, 24, 35, and 36, and "successors," on line 27, page 119, of this record are interelined in the original deed.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Huntington Smith and wife to the Connecticut Mutual Life Insurance Company, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book 661, page 119.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this sixteenth day of October, A. D. 1888.

WM. A. HOBBS, *Recorder.*

By Mr. JEWETT: I object because they have no title, and for specific reasons which we will give more particularly hereafter.

Counsel for defendants offered in evidence deed from Robert Wade and wife to the Connecticut Mutual Life Insurance Company, dated June 19th, 1882; filed for record January 14th, 1886, Book 782, page 93:

Deed from R. B. Wade and Wife to Conn. Mut. Life Insurance Co.

This indenture, made on the ninth day of June, A. D. one thousand eight hundred and eighty-two, by and between Robert B. Wade and Belle N. B. Wade his wife of the city of St. Louis and
216 State of Missouri, parties of the first part and the Connecticut Mutual Life Insurance Co. (a corporation) of the city of Hartford and State of Connecticut, party of the second part witnesseth: That the said parties of the first part, in consideration of the sum of ten $\frac{00}{100}$ dollars to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged do by these presents remise, release and forever quitclaim, unto the said party of the second part, the following-described lots, tracts or parcels of land, lying being and situate in the city of St. Louis and State of Missouri, to wit: Lot numbered forty-six (46) of Peter Lindell's second (2d) addition to the city of St. Louis, bounded northerly by Maryland avenue, easterly by Cornelia avenue, southerly by Lindell avenue and westerly by Taylor avenue. To have and to hold the same, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part, and unto its successors and assigns forever; so that neither the said parties of the first part nor their heirs or successors, nor any other person or persons for them or in their name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these presents be excluded and forever barred.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ROBERT B. WADE. [SEAL.]
BELLE N. B. WADE. [SEAL.]

217 STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this 9th day of June, A. D. 1882, before the undersigned, a notary public within and for the city of St. Louis and State of Missouri, personally came Robert Wade and Belle N. B. Wade, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Belle N. B. Wade, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband, acknowledged that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely and without fear, compulsion, or undue influence of her said husband.

Copy of Seal. Frank Obear, Notary Public, City of St. Louis, Mo.

In testimony whereof I have hereto set my hand and affixed my official seal, at my office, in St. Louis, the day and year first above written. My term of office as a notary public will expire April 29th, 1883.

FRANK OBEAR,
Notary Public, City of St. Louis.

Filed and recorded Jan. 14th, 1886, at 9.58 a. m.

THOS. FARRELLY, *Recorder.*

NOTE.—The words "city," on lines 47 and 49, page 93;
218 city, line 7; successors, line 14; "successors," line 16; "city," on lines 26 and 28, p. 94, of this record, are interlined in the original deed.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Robert B. Wade and wife to Connecticut Mutual Life Ins. Co, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book No. 782, page 93.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this sixteenth day of October, A. D. 1888.

WM. A. HOBBS, *Recorder.*

Also deed of trust and record of satisfaction of Logan D. Dameron and wife to Robert Todd, trustee of the Connecticut Mutual Life Insurance Company, dated the 26th day of October, 1872, recorded in Book 455, page 514:

Deed of Trust, L. D. Dameron to Conn. Mut. Life Insurance Co.

This deed, made and entered into this twenty-sixth day of October, eighteen hundred and seventy-two, by and between Logan D. Dameron and Elizabeth H. his wife of the city and county of St, Louis in the State of Missouri, parties of the first part and Albert Todd of said city party of the second part and the Connecticut Mutual Life Insurance Company a body corporate of the city of Hartford in the State of Connecticut party of the third
219 part, witnesseth: That the said parties of the first part in consideration of the debt and trust hereinafter mentioned and created and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged do by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part all that certain parcel of ground situate in said county and known and described as block number forty-six (46) of Peter Lindell's second addition to

said city of St. Louis as laid down upon the plat thereof of record in the office of the recorder of deeds for said county, and is bounded north by Maryland avenue, south by Lindell avenue, east by Cornelia avenue and west by Taylor avenue, and contains ten and four hundred and ninety-two thousandths acres ($9\frac{492}{1000}$ ac.) of land more or less. To have and to hold the same with the appurtenances to the said party of the second part and to his successor hereinafter designated and to the assigns of him, and of his successor forever. In trust however for the following purpose, whereas, the said Logan D. Dameron has made and delivered to said third party his certain eleven promis-ory notes all of even date herewith and payable in said city of Hartford, with interest from maturity until paid at the rate of ten per centum per annum, to wit: One principal note for the sum of thirty-five thousand dollars, payable five years after date and ten semi-an-ual interest notes therewith, each for the sum of fourteen hundred dollars and payable successively in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four and sixty months after date, and has also agreed with said third part endorsees and assignees to cause all taxes and
220 assessments general and special, non existing against said property to be paid on demand and all such hereafter levied or charges on it, or therefor to be paid within the times required by law, and also to keep said premises free from statutory-lien claims of every kind, and in case of default in any of said agreements to pay the examining fee, not exceeding five dollars, for ascertaining such default, and if any or either of said agreements be not performed as aforesaid, then said third party and its endorsees may pay such taxes and also the final judgment of any and every statutory-lien claim and for repayment for all moneys paid therefor and interest thereon, these presents shall be a security in like manner and with like effect, as for the payment of said notes. Now, if said notes be paid, when they become respectively due and said agreements be faithfully performed as aforesaid, then this deed shall be void and the property hereinbefore conveyed shall be released at the cost of said parties of the first part, but if default be made in the payment of said notes, any or either of them when they respectively become due, or in the faithful performance of any or either of said agreements as aforesaid, then this deed shall remain in force, and the said party of the second part, or in case of his death, inability, or refusal to act, or absence from said city of St. Louis, when authorized to sell under these presents and a sale be desired by the holder of said notes, any or either of them, then the sheriff of said county, for the time being (who shall thereupon become his successor to the title of said property and the same become vested in him, in trust for the purposes and objects of these presents, and with all the powers
221 duties and obligations thereof) may proceed to sell the property hereinbefore described, or any part thereof, at public vendue to the highest bidder, at the eastern front of the court-house in said city of St. Louis for cash, first giving twenty days' public notice of the time, terms and place of said sale, and of the property

to be sold by advertisement in some newspaper printed and published in said city of St. Louis, and upon such sale shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof (a recital wherein of the giving of such notice and in case such sheriff sell, of the happening of any or either of the aforesaid events making him successor herein as aforesaid shall be proof thereof) and receive the proceeds of said sale, out of which he shall pay, first the costs and expenses of executing this trust, including compensation to the trustee for his services, and next to said third party or its endorsees upon the usual vouchers therefor, all moneys paid for taxes, and judgments on statutory-lien claims as hereinbefore provided for and interest thereon at the rate of ten per centum per annum from the times of their payment, and said examining fee, if any due and unpaid, and next such of said interest notes as then due and unpaid, and all interest grown thereon, and next if enough therefor, said principal note, whether due or not, and all interest grown therefor and thereon, and if not enough therefor, then apply towards their payment what there is and on all said sums the then current rate of exchange at said city of St. Louis on the city of New York, and in case all said demands be fully satisfied from said proceeds, and any of said interest notes remain the same shall be cancelled and
222 the balance of said proceeds if any shall be paid to the said parties of the first part or their legal representatives, and the said party of the second part covenants faithfully to perform and fulfill the trust herein created.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

LOGAN D. DAMERON. [SEAL.]
ELIZABETH DAMERON. [SEAL.]
ALBERT TODD. [SEAL.]

Executed in presence of—

—— ——.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-sixth day of October, eighteen hundred and seventy-two, before me, the undersigned, a notary public in and for the county aforesaid, came Logan D. Dameron and Elizabeth H., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Elizabeth H. Dameron, wife of the said Logan D. Dameron, having been by me first made acquainted with the contents of said instrument, acknowledged to me, upon an examination of her separate and apart from her husband, that she executed the same and relinquished her right of dower in the real estate therein described and every other right and estate therein freely and without compulsion or undue influence of her said husband.

[SEAL.] In testimony whereof I hereunto set my hand and official seal the day and year last above written.

223 THOS. HUNTINGTON,
Notary Public, City of St. Louis, Missouri.

Filed and recorded Oct. 26th (12.28 p. m.), 1872.
W. C. KENETT, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, hereby certify the foregoing to be a true copy of an instrument of writing executed by Logan D. Dameron and wife to Connecticut Mutual Life Insurance Company's tr., together with the acknowledgment, marginal release, and date of filing and recording thereof, as the same remains of record in my office in Book 455, page 514.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this sixteenth day of October, A. D. 1888.
WM. A. HOBBS, *Recorder.*

Satisfaction of Above Deed of Trust.

The undersigned, *cestui que trust.* in the deed of trust recorded in part on this page and executed by Logan D. Dameron and wife, acknowledge full satisfaction of said deed of trust and forever release the property therein conveyed from the encumbrance created thereby.

Witness the signature of the Connecticut Mutual Life Ins. Co., by Budd and Wade, its att'ys-in-fact, by C. P. Budd, of said firm, and the seal of said C. P. Budd.

THE CONNECTICUT MUTUAL
224 LIFE INSURANCE COMPANY,
By their attorney'-in-fact, BUDD AND WADE,
By C. P. WADE. [SEAL.]

This 2nd July, 1880.
Attest: JAMES P. WILTON,
D'y Recorder.

Also "Exhibit 39," deed of Rufus Easton and wife to William Stokes, dated July 10th, 1819:

225 *Deed.*

R. Easton
to
Wm. Stokes.

Know all men by these presents that we Rufus Easton and Abial Easton wife of said Rufus Easton of the town and county of St. Louis in the Territory of Missouri, for and in consideration of the sum of two thousand three hundred and forty dollars to them paid by William Stokes of the same place at and before the sealing and

delivery of these presents, the receipt whereof is hereby acknowledged, have granted bargained and sold, and do hereby grant, bargain and sell unto the said William Stokes his heirs and assigns forever a certain tract of land containing two hundred and thirty-four acres situate about three miles west of the town of St. Louis aforesaid in township No. 45 north in range No. 7 east of the 5th principal meridian and running and bounded as follows to wit: Beginning at a stone at the southeast corner of McGirk's tract thence south 36 14 links to a stone, thence north 75 west 75 38 links, to a post, thence north 8¾° east 247 links to Gratiot's old corner stone, thence north 83° west 1200 links to a stone, thence north 7° east 1570 links to a stone, at the southwest corner of Col. Samuel Hammond survey thence east 4766 links to the southeast corner of said Hammond survey thence south 383 links to a stone, thence east 4050 links to the place of beginning. It being part of a location of four hundred and eighty acres, made by virtue of a New Madrid certificate issued by the recorder of land titles for the Territory of Missouri in the name of Joseph Hunot or his legal representatives, and which the said Rufus Easton owns by virtue of a deed, Hunot to Joseph Vanden Benden to the said Rufus Easton. To have and to hold the said granted and bargained premises together with all and singular, the rights, privileges and appurtenances thereunto belonging or appertaining unto him the said William Stokes, his heirs and assigns forever. And the said Rufus Easton for himself his heirs executors and administrators covenent-, promises and agrees to and with the said William Stokes, his heirs and assigns that the tract of land in lieu of which the aforesaid certificate was obtained, was at the time of obtaining the said certificate free and clear of all or any encumbrances whatsoever, he the said Rufus Easton having particularly examined the records in the county of New Madrid to ascertain the same, and that he obtained from the clerk of New Madrid a certificate of the deed from Hunot to Vandenbenden, and deposited the same in the office of the recorder of land titles at St. Louis. And the said Rufus Easton further covenants as aforesaid to and with the said William Stokes, his heirs and assigns that the aforesaid granted and bargained premises unto him the said William Stokes, his heirs and assigns, he the said Rufus Easton his heirs, executors and administrators will and shall well and truly warrant and forever defend against the claims of all persons or claimants whomsoever.

In testimony whereof the said Rufus Easton and his wife have hereunto set their hands and affixed their seals at St. Louis this tenth day of July in the year of our Lord, one thousand eight hundred and nineteen.

RUFUS EASTON. [SEAL.]
ABIAL EASTON. [SEAL.]

Signed, sealed and delivered in the presence of—

P. QUARLES.
J. A. QUARLES.

226 TERRITORY OF MISSOURI, }
County of St. Louis. }

Personally appeared before the undersigned, a justice of the peace for the county aforesaid, on the tenth day of July, 1819, the within-named Rufus Easton and Abial A. Easton, his wife, and acknowledged that they sealed, delivered, and executed the within deed of conveyance as their voluntary act and deed to William Stokes, therein named, and having examined the wife of the said Rufus Easton separate and apart from her husband and made known the full contents of the said conveyance to her, upon that examination she declared that she did voluntarily and of her own free will and accord seal and as her act and deed deliver the said conveyance without any coercion or compulsion of her said husband.

Given under my hand and seal, date as above.

JOSEPH CHARLESS, *J. P.* [SEAL.]

Recorded July 31st, 1819.

ARCH'D GAMBLE, *Clerk.*

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Rufus Easton and wife to William Stokes, together with the ackowledgment and date of recording thereof, as the same remains of record in my office in Book "H," page 416.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this fourteenth day of May, A. D. 1888.

WM. A. HOBBS, *Recorder.*

It is admitted that the property conveyed by Easton to Stokes by deed dated July 10th, 1819, vested in Peter Lindell by mesne conveyances May 8th, 1827.

Counsel for defendants offered in evidence "Exhibit No. 42," tracings of private surveys, township 45, range 7 east:

PRIVATE SURVEYS, T. 45, R. 7 E.

(Here follows map marked p. 227.)

227 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 25th*, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed tracing of the plat of private surveys Nos. 1276, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1813, 1814, 3340, and 1815, known as "Cozens' surveys," in the Grande Prairie commons field- of St. Louis, in township 45 north, range 7 east, and showing the interferences of said surveys with other claims, is a true and literal exemplification of the original of record in this

office, authenticated by John Loughborough, surveyor general of Illinois and Missouri, as appears by his certificate thereon dated St. Louis, 26th February, 1858.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner of General Land Office.

228 Also "Exhibit 43," copy of Cozzens' survey in the Grand Pra-rie common fields, together with the act of the Commissioner of the General Land Office to the Secretary of the Interior and to the surveyor general of Illinois and Missouri thereon.
(Omitted, as per stipulation.)

By Mr. JEWETT: I object because it has nothing to do with this proceeding at all. It don't touch this land; it don't allude to it; it is a history of surveys made by the Government. This land never was surveyed by the Government and has nothing to do with it at all. He just puts in a book that don't touch us at all. We object to it as incompetent and irrelevant, as a book.

By Mr. REYNOLDS: We don't offer this as a book; we offer it as a copy of the survey here in question.

Counsel for defendants also offered in evidence "Exhibit 44," showing deed of Rufus Easton to the United States, conveying headright to New Madrid land, dated November 1st, 1816.
(Omitted, as per stipulation.)

By Mr. JEWETT: We object to that as immaterial and irrelevant. It is only encumbering the record for nothing. The law declares that the title to the New Madrid land shall pass to the United States when the exchange is made and the new location passes. It is an unnecessary encumbrance of the record.

By Mr. REYNOLDS: I offer pages one to seven, both inclusive, and pages 13 to 19, both inclusive, with the certificate in front of the paper.

229 *Relinquis-ment to U. S. by R. Easton, Nov. 1st, 1816.*

Know all men by these presents that I, Rufus Easton, of the town of St. Louis, in the Missouri Territory, as assignee of the following-named persons and for and in consideration of the privilege of locating other lands in lieu of the tracts of land hereinafter generally described according to the provisions of the act of Congress of the 17th February, 1815, which tracts of land have been conveyed to me, do grant, remise, release, and relinquish to the United States all my right and title to the said several tracts of land and lots of ground, to wit: A lot of one arpent in the town of New Madrid, in the county of New Madrid and territory aforesaid, and a lot of two arpents in the village of *of* the Little prairie, in the county of New Madrid aforesaid, the former granted to James Smith, the latter to J. Smith; also a tract of six hundred and forty acres of land situate

at the Portage bay of St. Francis, in the said county of New Madrid, granted to Joseph Hunot; to have and to hold the said several lots and tract of land above described unto the said United States, their successors and assigns, forever.

Witness my hand and seal the first day of November, 1816.

RUFUS EASTON. [SEAL.]

Signed, sealed, and delivered in presence of—
B. S. BULFINCH.
ROB'T McCLOUD.

MISSOURI TERRITORY, } ss:
St. Louis County, }

Personally came before me the undersigned, one of the justices of the peace for the county of St. Louis, in the Territory aforesaid, Rufus Easton, within named, and acknowledged the within conveyance to be his voluntary act and deed for the purposes therein mentioned. This 11th day of November, 1816.

JOSEPH CHARLESS, *J. P.* [SEAL.]

ST. LOUIS, 12*th March*, 1833.

SIR: Enclosed I transmit to you a copy of survey No. 2500 and certificate of the surveyor of public lands for the States of Missouri and Illinois; also the final or patent certificate No. 404 of the recorder of land titles in the State of Missouri for four hundred and eighty acres of land laying in the latter State, on which you will please issue the patent in conformity with said document and forward it to me per mail with as little delay as may be consistant with your convenience and the business of your office. The person in whose name the original certificate and location was made is believed to be dead. You will therefore please issue the patent to his legal representatives or in such other form as you may have adopted in such cases.

Very respectfully, your ob't serv't,

PETER LINDELL.

ST. LOUIS, *June* 23*rd*, 1858.

DEAR SIR: In the multitude of matter- occupying my attention whilst at Washington was the case of the Hunot survey in the Grande Prairie common field of St. Louis, being survey No. 2500, New Madrid certificate No. 161. My recollection is that you were to have me instructed to advertise the case in such a form as would notify all the parties in interest, so that the evidence *pro* and *con.* might be filed with arguments so as to enable your office to determine whether a patent ought to issue or not. I am not sure that my memory is accurate, but this is the impression left on my mind.

I will be obliged, if you can recall the matter to memory, if you will cause the proper instructions to be forwarded to me. I think, unless there are adverse claimants who can show a good title, it

will be well to issue a patent, as the survey is an old one, but, of course, this cannot be done until we have all the evidence. The property is very valuable, and it is very desirable to have the matter disposed of. It is a thing of too great moment for me to assume to act in the absence of instructions. I have not examined the case very recently, but my impression is favorable to the title of
230 Mr. Lindell, the reps. of Hunt; at least to that portion not covered by confirmation survey. I am not aware that there are any other confirmation claims than those already surveyed which would interfere with it, but if there are they will no doubt be brought f'rw'd upon advertisement.

We have no news of any interest. Our campaign is just beginning. I am afraid we cannot defeat Blair, but we will give him a hard race.

Yours truly, JNO. LOUGHBOROUGH.

GENERAL LAND OFFICE, *August 25th*, 1858.

J. Loughborough, Esq., surveyor general, St. Louis, Mo.

SIR: Your letter of 23rd June last, in relation to the Hunot survey, No. 2500, in the Grand Prairie common field, N. M. certif. No. 161, is before me. In this case the Hon. Truston Polk recently made application at this office on behalf of Peter Lindell, representative of Joseph Hunot, and on the 23rd inst. the Hon. Edward Bates, as counsel for said Lindell, filed an argument in the case.

It is now agreed on the part of Mr. Lindell to accept a patent for survey No. 2500 as shown on the diagram before this office, certified by you on the 27th May, 1858, saving and excepting therefrom the interferences as indicated by said diagram. I have therefore to request that, if upon examination of the survey in connexion with the original location and the record of your office you find it substantially in accordance with said location and such as under the long-established principles respecting old surveys should be finally approved, you will give special notice to all parties interested, and proper public notice that if at or before the expiration of three months from the date of notice valid cause should not be shown to the contrary the plat will be finally approved excepting & excluding therefrom the following adverse claims conflicting therewith:

No. 1663, Pierre Barribeau.
No. 1664, Louis Lacroix.
No. 1665, Louis Laroche.
No. 1813, Vincent Bouis, under P. Choteau.
No. 1814, B. Riviere dit Becanne.
No. 3340, Guillaume Bizet.
No. 1815, Peter Lacroix.

You will then at the proper time furnish the recorder with a duly certified plat, to be forwarded to this office with his certificate as the basis of a patent.

The original survey and pat. cert. No. 404 are enclosed; also the argument of Mr. Bates, all to be returned.

Very respectfully, your ob't ser't,

JOS. S. WILSON,
Acting Commissioner.

RECORDER'S OFFICE, SAINT LOUIS, 18*th February*, 1859.

SIR: I herewith transmit:

1st. A plat and transcript of survey No. 2500, in t'p 45 N., R. 7 E., 5 p'l mrd., of the location under New Madrid certificate No. 161, granted to Joseph Hunot or his legal representatives, for 480 acres.

The document was returned on the 5th instant by the surveyor general, with a copy of your instructions of the 26th August, 1858.

2nd. Patent certificate No. 492, issued for survey No. 2500 in conformity with the above instructions.

3rd. The abstract of certificate No. 492. The necessary annotations to show that certificate No. 404, which had been formerly issued for survey No. 2500, is superseded by certificate No. 492 are made in the books. Mess. Ed. Bates and Peter Lindell, of this city, claim the patent.

I am, very respectfully, sir, your obedient servant,

ADOLPH RENARD, *Recorder.*

Thomas A. Hendricks, Esq., Commissioner of the General Land Office, city of Washington.

231 DEPARTMENT OF THE INTERIOR, *November* 12*th*, 1860.

SIR: Your report of the 10th May last submitted to me the case wherein C. C. Whittlesey, as attorney for the Pacific R. R. Company, appealed from your decision in favor of issuing the patent upon the location and survey No. 2500 of New Madrid warrant No. 161 issued to Joseph Hunot. After an examination thereof my decision is in favor of issuing the patent.

The original warrant was duly issued in Aug. 1816, and the survey made June 23rd, 1819. The survey varied somewhat from the application to locate, but as the power to locate was with the surveyor general, who acted for the United States as well as for the claimant, neither the Government nor third persons whose rights are not affected by the variance can interpose that objection where the party is satisfied and the location is made in compliance with the law.

It is contended by the attorney for the railroad that the location is void, inasmuch as the survey was not certified to the recorder of land titles at St. Louis till January, 1833; and the 2d section of the act of 26 April, 1822, places a limitation upon the location and requires the survey to be returned to the recorder prior to April 26th, 1823. (See Stat., vol. 3, p. 668.) The cases he cites, Bagnell *vs.* Broderick, 13 Peters, p. 436, and Lescieur *vs.* Price, 12 Howard, p. 74, and also those of Barry *vs.* Gamble, 3d Howard, p. 51, and Hale *vs.* Gaines, 22d Howard, p. 159, do establish the proposition that until

a notice or return of the survey is presented to the recorder of land titles at St. Louis and recognized by him it can have no force as against the United States, as it is incomplete under the requirements of the New Madrid act of 17th February, 1815; but this survey was returned to the recorder in January and a patent certificate issued in February, 1833, and the location then became complete. If otherwise, in accordance with law the patent should issue upon the survey.

The act of 9th April, 1818, limited the time of applying for warrants under the act of 17th Feb., 1815, to the 1st January, 1819, and the 2nd section of the act of 26th of April, 1822, required that all warrants not located prior to the date of that act "shall be located within one year after the passage of this act." Now, as limitation in the act of 1818 is upon the acts and discretion of the claimants under the act of 1815, I am disposed to regard the act of 1822 also in that light. When that limitation expired there appears to have been nothing remaining to be done by Hunot or the claimants under him to complete his location. His warrant appears to have been returned to the officers and to have been on file with the survey. He had surrendered his land at New Madrid, or offered to do so, and it only remained with the officers of the United States to act in order to close the transaction. Hunot could not at any time after the execution of the survey by the deputy surveyor and the filing and record- thereof in the office of the surveyor general have withdrawn his warrant for relocation without the concurrence of the executive officers entrusted with the completion of his title; and as the warrant and survey remained on file when the act of 1822 expired, I do not think the limitation therein affects the rights of the claimants after the subsequent favorable action of the surveyor general and recorder in the case, although that action was had subsequent to the 23rd April, 1823, nor do I think that the arguments and decisions of the Supreme Court of the United States in Easton *vs.* Salisbury, 21st Howard, 431, and Hale *vs.* Gains, 22d Howard, p. 159, are in conflict with this construction of the limitation in question. The decision in Barry *vs.* Gamble I regard as sustaining the view I have taken.

There is an allegation by some of the parties opposing the survey that the land was not liable to location; but as no specific ground for such allegation is set forth, and your report states no objection of this kind, it is presumed to be untenable.

232 For many years this patent appears to have been withheld by your office because the original survey included some parcels of land which have been found to constitute parts of confirmed private claims. The claimant and attorney for the survey No. 2500 have recently assented to the reform of its lines, and the introduction of proper exceptions in the patent so as to exclude the land embraced in such private claims, and I do not doubt the power of your office to make the corrections with such assent, notwithstanding the intervening grant of lands to the State of Missouri for railroad purposes by act of Congress approved June 10th, 1852.

Whatever title may exist in the State or her assignees appears

under that law to be susceptible of assertion in the courts, and the issuance of the patent on the New Madrid location appears to be just and legal and necessary in order that the claimants under it may have a standing of the like dignity.

The patents and the papers submitted with your report are now returned.

Very respectfully, your ob't serv't,

J. THOMPSON, *Secretary.*

Hon. Jos. S. Wilson, Commissioner of the Gen'l Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *September 27th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy relinquishment of certain lands in New Madrid county, Missouri, to the United States by Rufus Easton, executed November 1, 1816, and its execu-
233 tion acknowledged before Joseph Charless, J. P. for St. Louis county, Missouri Territory, November 11, 1816; also a copy of a letter, dated St. Louis, 12th March, 1833, from Peter Lindell to the Commissioner of the General Land Office, transmitting copy survey No. 2500 and patent certificate No. 404, and requesting the issue of patent thereon; also a copy letter, dated St. Louis, June 23rd, 1858, from the surveyor general of Missouri and Illinois to the Commissioner of the General Land Office relative to said survey No. 2500; also a copy letter, dated August 25, 1858, from the acting Commissioner of the General Land Office to the U. S. surveyor general, St. Louis, Missouri, in response to the surveyor's said letter of June 23, 1858; also a copy letter, dated Saint Louis, Fe'ry 10th, 1859, from the U. S. surveyor general of Missouri and Illinois to the Commissioner of the General Land Office in response to the Commissioner's said letter of August 25, 1858; also a copy letter, dated Saint Louis, 18th February, 1859, from the recorder of land titles, Missouri, to the Commissioner of the General Land Office, transmitting plat and transcript of survey No. 2500, in township 45 north, of range 7 east, of the 5th principal meridian, Missouri, of the location under New Madrid certificate No. 161, granted to Joseph Hunot or his legal representatives, for 480 acres, and patent certificate No. 492, with an abstract, and also a copy letter, dated November 12, 1860, from the honorable Secretary of the Interior to the Commissioner of the General Land Office relative to said survey No. 2500 and the issue of patent thereon, are true and literal exemplifications of said relinquishment and letters as they appear of record or on file in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner.

Also Exhibit 5½ A, claims and confirmations of private lands, claims Nos. 467, 349, 37, and 161.

D. Llf.

Claims and Conf. Private Lands, Claims Nos. 467, 349, 37, *and* 161.

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 7th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copies prepared from and exhibit of private land claims in Missouri in the custody of this office are true and literal exemplifications of so much of said exhibit as they purport to show.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

234

EXHIBIT B.

Confirmations of Land Claims in Missouri by the Act of 29th April, 1816, Town and Village Lots, According to Recorder Bates' Report of the 2d February, 1816.

No. of claim.	Names of the claimants and confirmees.	Quantity. Claimed.	Quantity. Confirmed.	Situation.	Nature of claim.	References to the books in the recorder's office; registre d'arpentage in the surveyor gen'l's office.	Survey. No.	Survey. Series.	Date of— Approval of survey.	Date of— Return to recorder and other notes.	Remarks.	
*	* * * *	*	*	* *	* *	* * *	*	*	* *	* *	* *	
462	* * *	*	As claimed	Town of New Madrid.	Possession prior to 20 Dec., 1803.	D., ps. 182, 183, & 187; Bates' Dec., p. 48.	.....	.....	Injured by earth quakes and relinquished.	.....	* *	
463	* * *	*	As claimed	...do ..... do ...	.....do	D., ps. 182 & 183; Bates' Dec., p. 48.	.....	.....	.....do	.....	* *	
464	* * *	Not ascertained.	As claimed	...do .....do ...	.....do	A., 10467; Bates' Dec., p. 48.	.....	.....	.....do	..... do	* *	
465	* * *	*	.....do	...do .....do ...	.....do	* * *	.....	.....	.....do	.....do	* *	
466	* * *	*	.....do	...do .....do ...	.....do	E., p. 302; Bates' Dec., p. 48.	.....	.....	.....do	.....do	* *	
467	Joseph Hunot (Senior)..	1 arpent ...	.....do	...do .....do ...	.....do	Same	.....	.....	.... do	.....do	New Madrid certificate No. 37 issued in lieu thereof. See Exhibit F.	
*	* * * *	*	*	*	* *	* * *	*	*	* *	* *	* *	

See the general note of remarks on the following page.

235

EXHIBIT E.

Confirmations of Land Claims in Missouri by the Act of 29th April, 1816—Settlement Rights, According to Recorder Bates' Report of the 2nd February, 1816.

No of claim.	Names of the claimants and confirmees.	Quantity claimed.	Nature of claim.	Number of— Survey.	Number of— Township.	Number of— Range.	Quantity confirmed & contained in the survey.	Date of— Execution of the survey.	Date of— Return to the recorder.	References to books in the recorder's office.	Remarks.
348	* *	*	* *	.....	* *	*	*	* *	* *	* *	* * *
349	Joseph Hunot...	800 arpents.	Settlement right ..	.....	.....	.....	640 acres	.....	.....	E., pages 111 & 275; Bates' Decisions, page 13.	Injured by earthquakes. See No. 161 of Exhibit F.

236

Exhibit F.

New Madrid Claims.

No. of certificate.	Names of claimants and confirmees.	Date of the issue of the certificate.	Date of the location of the certificate.	Date of the act confirming the original claim, and reference to previous exhibits.	Number of— Survey.	Township.	Range.	Quantity given in the certificate and contained in the survey.	Date of— Execution of the survey.	Return to the recorder.	References to books in recorder's office.
*	* * *	* * *	* * *	* * *	*	* *	* *	* *	* *	* *	* * *
37	Joseph Hunot, S-n'r	24 November, 1815...	27 November, 1816...	29 April, 1816; No. 467, Exhibit B.	2514	49 north.	19 west...	160 acres..	August, 1818.	8 January, 1820.	Testimony, &c., page 16 *

* Remarks.—Certificates No. 37 & 161 make up 640 acres.

237

Exhibit F.

New Madrid Claims.

No. of certificate.	Name of the claimant and confirmees.	Date of the issue of the certificate.	Date of the location of the certificate.	Date of the act confirming the original claim, and reference to previous exhibits.	Number of— Survey.	Township.	Range.	Quantity given in the certificate and contained in the survey.	Date of— Execution of the survey.	Return to the recorder.	References to books in the recorder's office.
*	* * *	* * *	* * *	* * *	*	* *	* *	* *	* *	* *	* * *
161	Joseph Hunot.....	12 August, 1816.....	16 June, 1818.....	29 April, 1816; No. 349 of Exhibit E.	2500	45 north.	7 east.....	480 acres...	June, 1819.	5th February, 1859.	Testimony, &c., page 48.*

* Remarks.—Certificate- Nos. 37 & 161 make up 640 acres.

238 Also "Exhibit No. 6" and patent certificate No. 404, issued by F. Conway, recorder of land titles, February 22d, 1833, to Joseph Hunot or his legal representatives, survey 2500.

(161.)

OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, *August 12th*, 1816.

I certify that a tract of six hundred and forty acres of land at portage of River St. Francis, in the county of New Madrid, which appears from the books of this office to be owned by Joseph Hunot (who has already received certificate No. 37, for 160 acres), has been materially injured by earthquakes, and that in conformity to the provision of the act of Congress of 17th February, 1815, the said Joseph Hunot, or his legal representatives, is entitled to locate four hundred and eighty acres, the balance under the limitations of the said act of Congress, on any of the public lands of the territory of Missouri the sale of which is authorized by law.

(Sig'd) FREDERICK BATES.

To William Rector, Esquire, surveyor of the lands of the United States for the Territories of Missouri and Illinois:

Take notice that pursuant to the act of Congress entitled An act for the relief of the inhabitants of the late county of New Madrid who suffered by earthquakes, approved February 17th, 1815, I claim the right to locate four hundred and eighty acres of land mentioned in the certificate to you produced, being issued by the recorder of land titles for said territory, of a tract of six hundred and forty acres of land originally claimed by and confirmed to Joseph Hunot (who has already received a certificate for one hundred and sixty acres), which said quantity of land mentioned in said certificate I request you to locate and survey in Howard county, north of Missouri, beginning about one mile north of Elisha Reas' plantation at a red oak on a dividing ridge between Salt creek and Boone Femme, and running thence north three hundred and eleven and one-tenth perches; thence west two hundred and twenty-six and five-tenth-perches; thence south three hundred and eleven and one-tenth perches; thence east two hundred and twenty-six and five-tenth-perches to the place of beginning; or if it cannot be located and surveyed as aforesaid, then as follows, to wit: Beginning as aforesaid, thence north sixty-six chains thirty-three links; thence west sixty-six chains thirty-three links; thence south sixty-six chains thirty-three links, and thence east to the place of beginning. Dated the 4th day of November, 1816.

RUFUS EASTON,
Assignee, Agent & Attorney of Claimant.

Class No. 37. Rec'd into this office the 14th day of November, 1816.

239 Rufus Easton, as the legal representative of Joseph Hunot, enters four hundred and eighty acres of land by virtue of

a certificate No. 161, dated August 12th, 1816, issued by Fred. K. Bates, Esq., recorder of land titles, to wit, that part of fractional section seventeen, in township forty-five north and range seven east (the township in which St. Louis is situate), lying north of the Cul-de-sac fields; fractional section eighteen, in the same township, and so off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity.

St. Louis, June 16th, 1818.

JOSEPH C. BROWN,
For RUFUS EASTON.

No. 404. OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, MISSOURI, *February 2nd*, 1833.

I certify that in pursuance of the act of Congress passed the 17th day of February, 1815, a location certificate, No. 161, issued from this office in favor of Joseph Hunot or his legal representatives for any quantity not exceeding six hundred and forty acres of land, that a location has been made, as appears by the plat of survey herewith, and that the said Joseph Hunot or his legal representatives is entitled to a patent for the said tract, containing, according to said location and survey No. 2500, four hundred and eighty acres, being in township No. 45 north of the base line, range No. 7 east of the 5th principal meridian.

F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

GENERAL LAND OFFICE, *8th Feb.*, 1834.

The Hon. Wm. H. Ashley, Ho. of Reps.

SIR: I return the letter of Mr. Lindell, referred by you to this office, requesting a patent for the New Madrid claim of Joseph Hunot, in township 45 north of range 7 east, location certificate No. 161, and patent certificate No. 404, and have to state that by letters of 11th March, 1823, from Charles S. Hempstead, and of 9th August, 1825, from Henry Chouteau and others, it appears that this claim has been located upon several unconfirmed Spanish claims, and, therefore, upon lands not liable to location under the New Madrid law of 1815. Under these circumstances a patent cannot be granted for the New Madrid location.

With, &c., ELIJAH HAYWARD.

ST. LOUIS, *15th July*, 1841.

To the Commissioner of the U. S. General Land Office.

SIR: The undersigned, as executor and trustee of the last will and testament of Simon Philipson, late of St. Louis, deceased, is now vested with the legal estate upon the trusts in said will expressed, of two tracts of land, containing two arpents front and forty arpents, French measure, in depth each; the one of which tracts is situated in what is called the Cul-de-sac common fields, near St. Louis, and the other in the Grande Prairie common fields, near St. Louis aforesaid. Said two tracts are now adversely held and occupied by one

Peter Lindell, who claims the same under color of two New Madrid locations—the one made by one Rufus Easton, under Joseph Hunot, in 1818, of 480 acres north of the Cul-de-sac fields; the other made by Mathew McGirk and Taylor Berry, under James Conway, of two hundred arpents. The number of the New Madrid certificate to Hunot is 161, and of that to James Conway is 348.

It is manifest on the face of the two surveys made of each of those New Madrid locations that the terms of each location are disregarded, and that the land actually surveyed is excluded by those
240 terms; besides it is also manifest that the locations of those two New Madrid certificates were made upon land not authorized to be sold, and therefore void. For this conclusion the Commissioner of the General Land Office is referred to the opinion of the Attorneys General of the United States, from those of Mr. Wirt, inclusive, down to the opinion of Mr. Attorney General Gilpin on the subject of locations.

The undersigned therefore requests that if any application be made for a patent based on either of said locations, the same may be not issued until the final decision (at least) of certain suits of ejectments which the undersigned feels it his duty to institute against said Lindell and every other person who claims or shall claim under or by virtue of said New Madrid locations.

This application is made to prevent the necessity of any proceeding hereafter for the purpose of annulling said patent or patents if they should be issued to said Lindell or others by the executive of the United States.

Very respectfully, JOSEPH PHILIPSON.

OFFICE OF THE SURVEYOR GENERAL,
ST. LOUIS, *August 9th*, 1852.

SIR: In compliance with your request of the 29th ult., I herewith transmit a statement of the locations and surveys made under the several New Madrid certificates embraced in the list of the Honorable R. M. Young of the 21st ult., a copy of which was transmitted with your said letter of the 29th.

I am, very respectfully, sir, your obedient servant,

M. LEWIS CLARK,
Surveyor General.

To the Commissioner of the General Land Office, at Washington city.

Statement relative to the following-designated locations certificates under the New Madrid act of the 17th Feb., 1815, made in pursuance of the instructions of the Commissioner of the General Land Office to the surveyor general at St. Louis of the 29th July, 1852.

All in township 45 N., R. 7 E., 5th P. M.

Certificate No. 19, 160 acres, for Joseph Genereux, located 12th Dec., 1817, to eastward of and adjoining to the eastern boundary of the location made for Francis Delisle (certificate No. 16) and to ad-

join the southern boundary of the common-field lots of Grand Prairie; survey executed 23rd June, 1819, and numbered 2692. Part of this location lies on surveys of lots in the Grande Prairie common field executed since. The southern boundary of survey No. 3304 was also the southern boundary of said common field as run by Joseph C. Brown in 1818.

NOTE.—The plat of T. 45 N., R. 7 E., in the General Land Office shows no lot south of survey No. 3285 for Dumgand. There are south of A 21 lots of the Grande Prairie lately surveyed by Wm. H. Cozens, under the direction of the former surveyor general. A report on these 21 lots is now being prepared and will be transmitted in a few days to the General Land Office.

Certificate No. 16, 200 arpents, for Francis Delisle, located 12th December, 1817; amendment of location without date, but must have been between the 29th July and 3rd of August, 1818; survey No. 2620. It is outside of any common field, but adjoined the old western and southern boundaries of the Grand Prairie run by Joseph C. Brown in 1818.

Certificate No. 103, 160 acres, for Eustache Peltier, located Oct. 24th, 1816, survey No. 2472. It lies outside of any common field.

Certificate No. 150, located June 16th, 1818, for James Y. Ocarroll, by "Christian Wilt, as the legal representative of James Y. Ocarroll, enters six hundred and forty acres of land by virtue of certificate No. 150, dated Nov. 30th, 1815, issued by Frederick Bates, Esq., recorder of land titles, to wit: Fractional section twenty, in township forty-five north and range seven east, the same in which St. Louis is situated; that part of fractional section seventeen in the same township which lies south of the Cul-de-sac fields; the western half of fractional section twenty-one in the same
241 township, and so much off from the north side of the western half of fractional section twenty-eight in the same township as will make the quantity;" survey No. 2498. It interferes with the survey of the commons of St. Louis, and to a small extent with the survey of the Barriere des Noyers lots. This last interference has been ascertained of late, and is not shown on the plat in the General Land Office.

Certificate No. 159, 160 acres, for J. Smith, located November 1st, 1816; survey No. 2491. It lies outside of any common field.

Certificate No. 161, 480 acres, for Joseph Hunot, located June 16th, 1818, so as to include that part of fractional section 17, in township 45 north, range 7 east, north of the Cul-de-sac field; fractional section 18, and so much off the east side of the unappropriated part of fractional section 8 as will make the quantity; surveyed June 23rd, 1819, and numbered 2500. It interferes with the recent surveys by Cozens in the southern part of the Grande Prairie common field, and also with his survey for Larochelle in the Cul-de-sac.

Certificate No. 145, 640 acres, for Martin Coontz, located 29th May, 1818, to include "that part of fractional section 10 and 15 which is not embraced by other private claims, and so much off from the east side of fractional section 9 as will make the quantity of 640

acres;" survey No. 2499, executed in July, 1818. It interferes with the old and new surveys of the Grand Prairie common field.

Certificate No. 348, 200 arpents, for James Conway, located June 16th, 1818, to wit: So much of fractional section 9 as is not embraced by the location of Martin Coontz, so much of the southeast quarter of section 8 as is not embraced by prior locations, and so much off on the north side of the N. E. quarter of fractional section 17 as will make the quantity; survey No. 2712, surveyed by Jos. C. Brown, June 23rd, 1819. It is altogether included within the new surveys in the Grand Prairie by Cozens.

OFFICE OF THE SURVEYOR GENERAL,
ST. LOUIS, *August 9th*, 1852.

I certify that the foregoing is extracted from the records and documents on file in this office.

M. LEWIS CLARK,
Surveyor General.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 7th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a copy of location certificate 161, dated St. Louis, August 12th, 1816, issued by Frederick Bates, recorder, in favor of Joseph Hunot or his legal representatives; also of a notice, dated 4th November, 1816, signed Rufus Easton, agent and attorney of the claimant, to William Rector, Esquire, surveyor general of the United States for the territories of Missouri and Illinois; also of the entry of 480 acres of land, dated St. Louis, June 16th, 1818, of Joseph C. Brown, for Rufus Easton, by virtue of a certificate No. 161; also of patent certificate No. 404, dated St. Louis, Missouri, February 2d, 1833, issued by F. R.
242 Conway, recorder of land titles in the State of Missouri, in favor of Joseph Hunot or his legal representatives, upon survey 2500, in township 45 north, of range 7 east, of the 5th principal meridian, Missouri; also of letter dated 8th February, 1834, from Commissioner of General Land Office to Honorable Wm. H. Ashley; also of a letter dated St. Louis, 15th July, 1841, from Joseph Philipson to the Commissioner of the General Land Office; also of a letter, dated St. Louis, August 9th, 1852, from M. Lewis Clark, surveyor general, to the Commissioner of the General Land Office, and of statement referred to in Mr. Clark's letter are true and literal exemplifications from the record and files of this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Also "Exhibit 6" A, the letters or patent certificates under act of February 17th, 1815, No. 404, delivered to Peter Lindell, as the legal representative of Hunot.

List of Patent Certificates.

243 A list of patent certificates prepared for issue by the recorder of land titles under the act of Congress of 17th Feb'y, 1815 (and the supplementary acts), for the relief of those inhabitants of the county of New Madrid who suffered by earthquakes.

Date.	No. P. C.	No. L. C.	Original claimants.	Quantity in acres.	To whom del'd.
1820.					
Jan. 12	*	*	* *	*	* *
* *	*	*	* *	*	* *
1820.					
Jan. 19	65	218	* *	*	* *
" "	66	31	* *	*	* *
" "	67	219	* *	*	* *
" "	68	116	* *	*	* *
" "	69	28	* *	*	* *
" "	70	144	* *	*	* *
" "	71	200	* *	*	* *
" "	72	298	* *	*	* *
" "	73	37	Joseph Hunot, Sen	160.....	Benson.
* *	*	*	* *	*	*
1820.					
Jan. 20	*	*	* *	*	* *
" "	101	430	* *	*	* *
" "	102	2	Joseph Hunot (supposed Jr.)...	160 ac's.	*
* *	*	*	* *	*	* *
1824.					
Jan. 16	346	40	* *	*	* *
" "	347	480	* *	*	* *
" "	348	364	* *	*	* *
" 18	349	140	* *	*	* *
" 21	350	373	* *	*	* *
" "	351	417	Ignace Hunot.....	640	*
* *	*	*	* *	*	* *

FREDERICK BATES,
Late Rec. L. Titles.

244 A list of patent certificates prepared for issue by the recorder of land titles under the act of Congress of 17th Feb., 1815 (and the supplementary acts), for the relief of those inhabitants of the county of New Madrid who suffered by earthquakes.

Date.	No. P. C.	No. L. C.	Original claimant.	Quantity in acres.	To whom del'd.
1820.					
Jan. 12	1	148	* *	*	* *
* *	*	*	* *	*	* *

FREDERICK BATES,
Late Rec. L. Titles.

Date of P. C.	No. P. C.	No. L. C.	Original claimant.	Quantity in acres.	To whom delivered.
*	*	*	* *	*	* *
1832.					
Jan. 4	399	122	* *	*	* *
Sept. 1	400	13	* *	*	* *
Oct. 11	401	54	* *	*	* *
" 12	402	367	* *	*	* $
Nov. 3	403	287	Nathaniel Shaver or his legal rep's.	*	* *
1833.					
Feb. 2.	404	161	Joseph Hunot or his legal rep's.	480	Peter Lindell, Esq.
		See No. 492	* *	*	* *

Abstract of Patent Certificates—Continued.

Date.	No. P. C.	No. L. C.	Original claimant.	No. of survey.	Quantity, acres.	To whom delivered.
* *	*	*	* *	*	*	* *
1859						
Feb. 18	492	161	Joseph Hunot or his legal rep's, but there is deducted from that area 95 20 acres on account of interfering with other claims leaving in patent cert.	2,500	480 ac's.....	Sent to Comm'r patent, claimed by Peter Lindell, Esq., of St. Louis.
			Pat. cert. No. 404 had been issued to Hunot on 2d Feb., 1833. See Comm'r's letter to sur. general of 26th Aug., 1858, a copy of which is on file.	.....	384.80 ac...	
* *	*	*	* *	*	*	* *

ADOLPHE RENARD.

245 A list of relinquishments of lands materially injured by earthquakes in the late county of New Madrid, (present) State of Missouri, under act of Congress of 17th February, 1815.

No. cert.	Claimants of record.	Quantity.	Situation.	Relinquished, by whom, and general remarks.
* * *		*	* *	* * *
2	Joseph Hunot, Jr..	Lot.....	Town New Madrid.....	Daniel Hodges' legal representatives.
* * *		*	* *	* * *
37	Joseph Hunot, Sr..	Lot.....	New Madrid.....	Wm. Kincheloe'- legal rep.; not transmitted, being an original conveyance.
* * *		*	* *	* * *
159	J. Smith.....	Lots	Little Prairie.....	Rufus Easton'- legal representatives.
160	James Smith.....	Lot.....	New Madrid.....	Same. Same.
161	Joseph Hunot	640 arps.....	Port. R. St. Francois...	Same. Same.
403	Andrew Godair.....	Bal. of 640..	* *	Rob't Wash.'- legal representatives & heirs—Scull, agent.
404	Alexis Preard.....	*	* *	Same. Same.
* * *		*	* *	Same. Same.
417	Ignace Hunot.....	640..... ...	Port. R. St. Francois...	Same. Same.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 7th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of "A list of relinquishments of lands materially injured by eart.quakes in the late county of New Madrid, (present) State of Missouri, under act of Congress of 17th February, 1815;" also a copy of a list of patent certificates prepared for issue by the recorder of land titles,
246 Missouri, under said act are true and literal exemplifications of so much of said lists as they purport to show and as they each appear in a book entitled "New Madrid Locations, Relinquishments, and Patent Certificates," now in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of the General Land Office.

Also Exhibit No. 6, letter of surveyor general's office, Loughborough, — Commissioner of the General Land Office of the United States:

247 *Letter from Sur. Gen'l Loughborough.*

Mailed Oct. 24.

OFFICE OF THE SURVEYOR GENERAL,
ST. LOUIS, *Oct. 14th*, 1857.

SIR: I have received your letter of the 24th ult., in which I am requested to make a thorough examination of the location of Jos. Hunot of 480 acres in T. 45 N., R. 7 E., of the 5th p'l M., under New Madrid certificate No. 161, and a full report touching that location and all adverse claims. With the letter were copies of the two communications from Alton Long, Esq., one dated the 17th Nov., 1855, to the land officers at St. Louis, containing his protest against their declining to permit him to enter the land covered by the said location; and the other, dated the 19th of same month, to the Commissioner of the General Land Office, in which Mr. Long stated his case and asked for the annulment of the Hunot survey.

Jos. Hunot, Jr., had a permission, dated the 20th June, 1802, from Francis Lesiur, commandant of the post of Little Prairie, to settle on the vacant land of that post. Under this he presented a claim for 800 arpents to the old board, which rejected it; but the same was confirmed to the extent of 640 acres by the 2nd section of the act of the 29th April, 1816. Book A, p. 275, board's minutes; 'Book 5, p. 105; Bates' Decisions, p. 13, in recorder's office; St. Pap., vol. 3, p. 313.

On the 12th August, 1816, Jos. Hunot, availing himself of the benefit of the act of 17th Feb'y, 1815, furnished evidence of the injury to his land by earthquakes. Following this testimony is a note

in the handwriting of Recorder Bates—*i. e.*, "R. Easton claims this tract with the right of location." It was relinquished under the act by "Rufus Easton's legal representatives." Recorder Bates on the same day granted certificate of new location, No. 161, with this remark: "Certificate dated August 12th, 1816, for 480 acres, which, together with certificate No. 37 for 160 acres, makes 640 acres the limitation." (Delivered.) R. Easton.

Certificate No. 37 is for a lot of 1 arpent in New Madrid, confirmed by the act of 29th April, 1816, but relinquished on account of damages by earthquakes.

A copy of certificate (letter A) No. 161 accompanying this report; a location of it (copy B) was made on the 4th of Nov., 1816. It is signed Rufus Easton, assignee, agent and attorney of claimant.

Paper C is a copy of the regulations prescribed to New Madrid claimants by Surveyor General Rector for the reception at this office of their locations. They require the producing of the certificate by the recorder with its location.

From a note written on Easton's location it appears that it was received with certificate No. 161 by the surveyor general on 14th Nov., 1816. But no survey was made, for, as endorsed on its back, the location was "withdrawn in consequence of indefinite calls and interferences."

A relocation was made on the 16th June, 1818 (paper D) by "Jos. C. Brown for Rufus Easton" as the legal representative of Jos. Hunot, to wit, that part of fractional section 17 lying north of the Cul-de-sac fields; fractional section 18 and so much off on the east side of the unappropriated part of fractional section 8 of the same township as will make the quantity in T. 45 N., R. 7 E., of the 5th p'l M. This is the location under consideration.

It was surveyed on the 23rd June, 1819, by Jos. C. Brown under his contract of 31st March, 1817. The survey was platted and described as No. 2500 in Book A, pages 84 and 85 (copy E), and return of it made the 8th Jan'y, 1833, to the recorder, who, on the 2nd of February of same year, issued patent certificate No. 404 and delivered it to Peter Lindell, Esq., of this city. The survey is stated to contain 480 acres, the quantity granted.

There are represented on diagram F, survey No. 2500 of the Hunot location, the areas of the several tracts it takes up, and all the claims conflicting with the survey. Survey No. 2500 conforms to the location as to fractional section 17 and 18. In regard to fractional section 8, the location calls for only so much off on the east side of the unappropriated part of the section as will with the other tracts make the quantity of 480 acres, whilst the survey includes the whole of the section. It embraces also fractional section 7 (21.12 acres) not mentioned in the location.

248 The separate contents of the four tracts show an aggregate area of 485.88 acres. Inasmuch as other locations are on section 8, it is thought proper to compare their dates with that of Hunot's, made the 16th June, 1816. They are as follows:

Francis Delisle, certificate No. 16; location on the 29th July or 3rd August, 1818, or on any of the intermediate days.

Joseph Genereux, certificate No. 19; location 12th December, 1817.

James Conway, certificate No. 348; location 16th June, 1818.

The claims conflicting with the survey for Hunot are the following lots of the Grande Prairie common field, which have been confirmed, with one exception, upon possession and cultivation prior to the 20th Dec'r, 1803. The confirmation of the case excepted (Bizet) is founded upon Spanish grant, to wit:

By act of 29th April, 1816.

Survey No. 1662, Benito Vasquez's representatives.
Survey No. 1815, Pierre Lacroix's representatives.
Survey No. 1814, Baptiste Riviere's representatives.

By acts of 13th June, 1812, and 26 May, 1824.

Survey No. 1663, Pierre Barribeau.
Survey No. 1664, Louis Lacroix.
Survey No. 1665, Louis Laroche's representatives.
Survey No. 1813, Vincent Bouis' representatives.
Survey No. 1814, Baptiste Riviere dit Baccane's representatives. (See above.)

Act of 4th July, 1836.

Survey No. 3340, Guillaume Bizet or his legal representatives.

These surveys were approved by your decision of the 27th Nov., 1856, which, being appealed from, was affirmed by Secretary McClelland on the 2nd March, 1847.

In your letter of the 24th ult. I am referred — mine of the 5th Feb'y, 1856, respecting the appeal of Mr. Lindell against survey 1815, of Pierre Lacroix'- lot of 2 arpens, one of the above interfering claims. In this case Messrs. Bates and Hill, the attorneys for Mr. Lindell, filed an argument, which was subsequently withdrawn and the appeal dismissed, — consequence, as I understand, of a compromise between Mr. Lindell and the heirs or representatives of Lacroix.

I am very respectfully your ob't servant,

JNO. LOUGHBOROUGH,
Surveyor General.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 7th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed, a letter dated St. Louis, October 14th, 1857, from Jno. Loughborough, surveyor general, to Commissioner of General Land Office, are true and literal exemplifications from the records and files of this office.

In testimony whereof I have hereunto subscribed my name and

[SEAL.] caused the seal of this office to be affixed, at the city of Washington, on the day and year first above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Also Exhibit 7, copy of the proof of survey 2500, dated January 22d, 1859, by Loughborough:

249 Survey No. 2500.

Plat and description of the survey of a tract of land of four hundred and eighty acres situate in township forty-five N. of the base line, R. 7 E. of the fifth principal meridian, in the State of Missouri, this being the tract located on the sixteenth of June, 1818, by Joseph C. Brown for Rufus Easton, the legal representative of Joseph Hunot, in virtue of a certificate, numbered one hundred and sixty-one, issued on the twelfth of August, eighteen hundred and sixteen, by Frederick Bates, United States recorder of land titles in the Territory of Missouri, in conformity with the provisions of the act of Congress of the seventeenth of February, eighteen hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

The location above mentioned calls for including "that part of the fractional section seventeen, in township forty-five north & range seven east (the township in which St. Louis is situate), lying north of the Cul-de-sac fields, fractional section eighteen in the same township, and so much off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity."

The tract so located was surveyed on the twenty-third of June, 1819, by Joseph C. Brown, deputy surveyor, under his contract with William Rector, surveyor of the lands of the United States in the Territories of Illinois and Missouri, dated the thirty-first of March, eighteen hundred and seventeen. The several lines thereof were subsequently remeasured, either in whole or in part, as lines of the adjoining or interfering private surveys. This survey is herein platted and described to conform to those measurements.

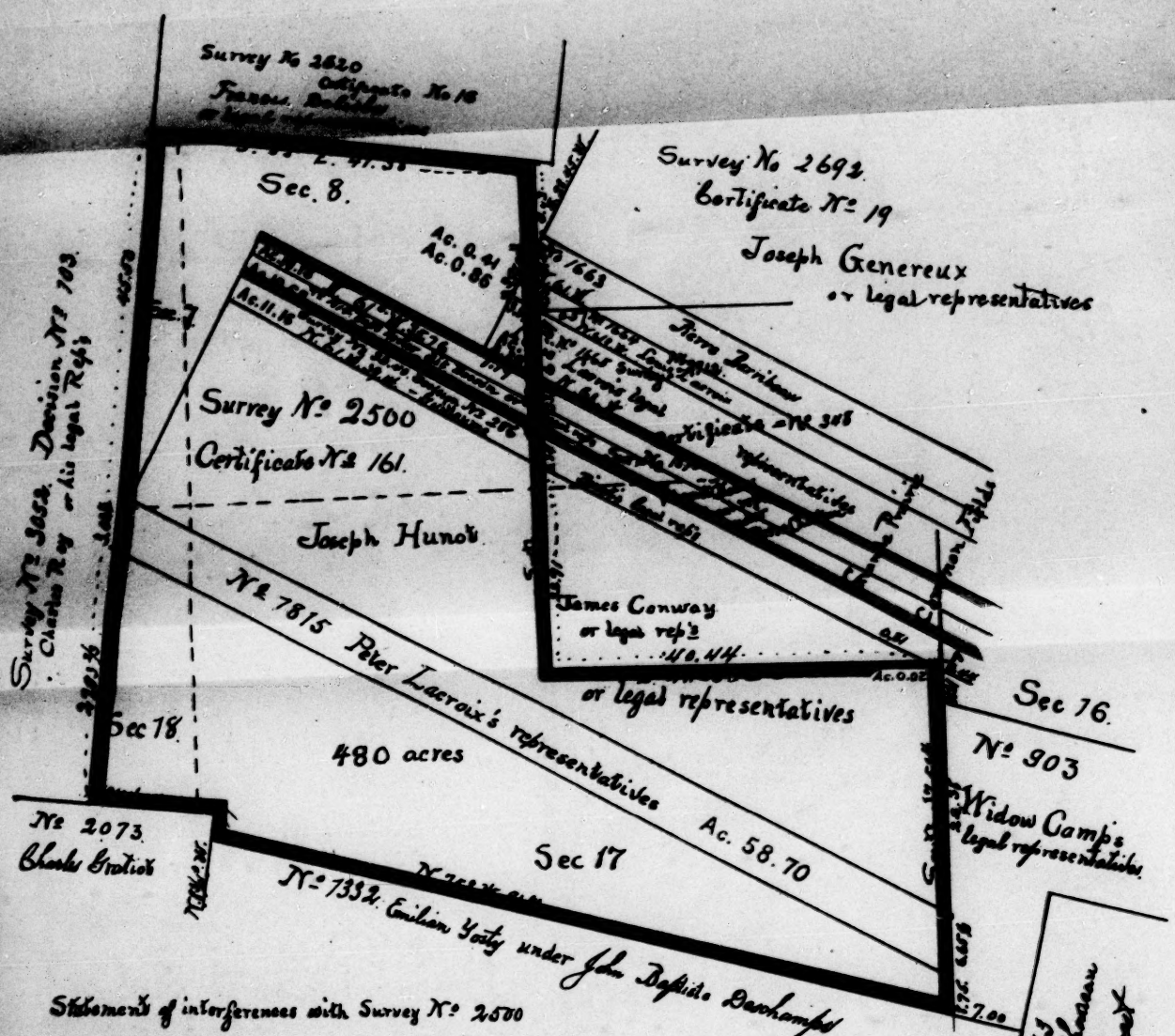
(Here follows diagram marked p. 250.)

251 *Description.*

Beginning at a stone in the west boundary of section sixteen, in township forty-five north, range seven east, corner to this survey and to survey numbered two thousand seven hundred and twelve, in the name of James Conway or legal representatives, from which a large stone marked with letter L on the top, said to have been set for corner to the Conway survey, bears east, seventeen links distant; thence south, at forty-four links a stone thirteen inches long, ten inches wide, three inches thick, set with the edges north sixty-one degrees west and south sixty-one degrees east, at the intersection with the southern boundary of survey numbered three thou-

no 937
Hammond } p. 250
v.
Ins. Co.

T. 45. N. R. 7. E. of the 5th prl M.



Statement of interferences with Survey No 2500

Survey No	1663	
" "	1664	0.41 acres
" "	1665	0.86 "
" "	1813 exclusive of the part included in Survey No 1814.	= 3.20 "
" "	1814	10.18
" "	3340	10.67
" "	"	11.16
"		0.02
" "	1815	58.70
	Total	95.20 acres

Scale 15 chains to an inch

119

sand three hundred and forty, in the name of Guillaume Bizet's legal representatives, from which a black oak seventeen inches in diameter bears north twenty-seven degrees and fifteen minutes west, distant twenty-eight links, and a black oak eight inches in diameter bears north fifty-eight degrees east, thirty-two and a half links distant; at four chains and seventy-five links a large stone, the northwest corner of survey numbered nine hundred and three, in the name of Widow Camp's legal representatives, and a corner to fractional section sixteen, from which a black oak twenty-four inches in diameter bears north sixty-five degrees and thirty minutes east, eighty-four links distant, and a black oak twenty-three inches in diameter bears north one degree and five minutes west, seventy-nine and a half links distant; at twenty-seven chains and thirteen links a stone fourteen inches long, eleven inches wide, three and a half inches thick, the northeast corner of survey numbered one thousand eight hundred and fifteen, in the name of Peter Lacroix's representatives; at thirty-three chains and seventy-eight and one-third links a stone; the southeast corner of the Peter Lacroix survey, thirty-seven chains and fifty-three and one-third links to a stone in the northern boundary of survey numbered one thousand three hundred and thirty-two, in the name of Emiline Yosty, under John Baptiste Deschamps, the southwest corner of the Widow Camp survey and the southeast corner of this survey, from which the northeast corner of the Emiline Yosty survey, in the western boundary of survey numbered three hundred and sixty-three, in the name of Auguste Chouteau, under Laclede Legest, bears south seventy-five degrees east, distant seven chains; thence north seventy-five degrees west with the northern boundary of the Emiline Yosty survey eighty-one chains and eighty links to a stone in the east boundary of Charles Gratiot's survey, numbered two thousand and thirty-seven, the northwest corner of the Emiline Yosty survey and a corner to this survey; thence north eight degrees and forty-five minutes east with the east boundary of the Charles Gratiot survey two chains and forty-seven links to a stone marked with letters "C G," the northeast corner of the Charles Gratiot survey and a corner to this survey; thence north eighty-three degrees west with the north boundary of the Charles Gratiot survey thirteen chains and fifty-three links to a large stone, the southeast corner of survey numbered three thousand and fifty-two, in the name of Charles Roy or his legal representatives, and a corner to this survey; thence north seven degrees east with the east boundary of the Charles Roy survey, at twenty-seven chains and ninety-three and two-thirds links a stone fourteen inches long, eight and a half inches wide, three inches thick, corner to the Peter Lacroix survey; at thirty chains and ninety-seven links a stone, corner of Peter Lacroix survey, seventy-six chains and forty-seven links to a large stone, the southwest corner of survey numbered two thousand six hundred and twenty, in the name of Francis Delisle or legal representatives, and the northwest corner of this survey; thence south eighty-three degrees east with the south boundary of the Francis Delisle survey forty-one chains and thirty-eight links to a large

stone marked L. corner to this survey and to survey numbered two thousand six hundred and ninety-two, in the name of Joseph Genereux or legal representatives; thence south, at nine chains and three links a stone ten inches long, nine inches wide, three inches thick, at the intersection with the western boundary of survey numbered one thousand six hundred and sixty-three, in the name of Pierre Barribeau, from which the southwest corner of the Pierre Barribeau survey bears south twenty-eight degrees and forty-five minutes west, distant three chains and ninety-one and a half links; at thirteen chains and fifty-two links a stone nine inches long, six inches wide, four inches thick, at the intersection with the south boundary of the Pierre Barribeau survey, which is the north boundary of Louis Lacroix's survey, numbered one thousand six hundred and sixty-four, from which the southwest corner of the Pierre Barribeau survey bears north sixty-one degrees west, distant
252 two chains and twelve links; at sixteen chains and thirty links a stone marked with letter L on the top, the southwest corner of the Joseph Genereux survey and the northwest corner of the James Conway survey; at sixteen chains and eighty-seven links a stone twenty and a half inches long, six inches wide, three and a half inches thick, at the intersection with the south boundary of the Louis Lacroix survey, which is also the north boundary of survey numbered one thousand six hundred and sixty-five, in the name of Louis Laroche's legal representatives, from which the southwest corner of the Louis Lacroix survey bears north sixty-one degrees west, distant three chains and eighty-one links; at twenty-three chains and fifty-six links a stone fourteen and a half inches long, six and a half inches wide, six inches thick, at the intersection with the south boundary of the Louis Laroche survey, which is also the north boundary of survey numbered one thousand eight hundred and thirteen, in the name of Vincent Bouis' legal representatives, under Pierre Chouteau, from which the southwest corner of the Louis Laroche survey bears north sixty-one degrees west, distant seven chains and nineteen links; at twenty-six chains and ninety-one links a stone ten inches long, nine inches wide, four inches thick, at the intersection with the north boundary of survey numbered one thousand eight hundred and fourteen, in the name of Baptiste Riviere dit Baccane or legal representatives, from which the northwest corner of the Baptiste Riviere survey bears north sixty-one degrees west, distant thirty-five chains and seventy-six links; at thirty chains and twenty-five links a stone fourteen inches long, ten and a half inches wide, three and a half inches thick, at the intersection with the south boundary of the Vincent Bouis and the Baptiste Riviere survey, which is also the north boundary of survey numbered three thousand three hundred and forty, in the name of Guillaume Bizet's legal representatives, from which the southwest corner of the Vincent Bouis and the Baptiste Riviere surveys bears north sixty-one degrees west, distant thirty-seven chains and forty-five links; at thirty-three chains and fifty-nine links a stone eleven and a half inches long, eight and half inches wide, four inches thick, at the intersection with the south boundary of the Guillaume Bizet survey, from which the southwest

corner of said survey bears north sixty-one degrees west, distant thirty-nine chains and fourteen links, fifty-six chains and thirty links to a stone, the southwest corner of the James Conway survey and a corner to this survey; thence east with the south boundary of the James Conway survey, at forty chains and forty-four links a stone fourteen inches long, eight and a half inches wide, two inches thick, set with the edges east and west, the intersection with the south boundary of the Guillaume Bizet survey, from which a black oak twelve inches in diameter bears north seventy-two degrees and forty-five minutes west, distant eleven links, forty-one chains and twenty-five links to the beginning corner.

Statement of Interferences of Survey No. 2500 with Other Surveys.

1. Survey No. 1663, of one and a half by forty arpents, claimed by Pierre Barribeau, confirmed by the act of Congress of the 13th June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," the extent and boundaries proven on the 3rd March, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled An act making further provisions for settling the claims to land in the Territory of Missouri." The area of the interfering part, 0.41 acre.

2. Survey No. 1664, of one by forty arpents, claimed by Louis Lacroix, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 3rd March, 1825, conformably to the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, 0.86 acre.

3. Survey No. 1665, of two by forty arpents, in the name of Louis Laroche's legal representatives, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on
253 the 28th July, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, 3.20 acres.

4. Survey No. 1813, of two by forty arpents, in the name of Vincent Bouis' legal representatives under Pierre Chouteau, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 1st June, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, exclusive of the part included in survey No. 1814, 10.18 acres.

5. Survey No. 1814, of one by forty arpens, in the name of Baptiste Riviere dit Baccane or legal representatives, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 28th July, 1825, conformably to the provisions of the act of Congress of the 26th May, 1824; confirmed also by the act of Congress of the 29th of April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in that Territory of Missouri." The area of the interfering part, 10.67 acres.

6. Survey No. 3340, of one by forty arpens, in the name of Guillaume Bizet's legal representatives, confirmed by the act of Congress of the 4th July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes." The area of the two interfering parts, 11.18 acres.

7. Survey No. 1815, of two by forty arpens, in the name of Peter Lacroix's representatives, confirmed by the act of Congress of the 29th April, 1816. This tract is wholly included in survey No. 2500 and contains 58.70 acres.

All the above surveys are lots in the Grand Prairie common field of Saint Louis. They were surveyed in the years 1850 and 1855 by William H. Cozens, deputy surveyor, under instructions dated the 9th of May, 1846, and the 22nd February, 1855.

Office of the surveyor general for Illinois and Missouri.

SAINT LOUIS, *January* 22, 1859.

The foregoing plat and description of survey No. 2500 are this day approved as recorded on pages 260, 261, 262, 263, 264 of this book.

JNO. LOUGHBOROUGH,
Surveyor General.

STATE OF MISSOURI,
OFFICE OF REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of the plat and description of survey No. 2500, as the same appears of record in Book A of New Madrid Surveys, now on file in this office.

In testimony whereof I have hereto set my hand and
[SEAL.] affixed the seal of my office, at the city of Jefferson, this 11th day of October, 1879.

JAS. E. McHENRY,
Register of Lands.

Also Exhibit No. 8, report to the Commissioner of the General Land Office, dated February 18th, 1859, pages 1, 2, and 3:

254 RECORDER'S OFFICE, ST. LOUIS, 18*th February*, 1859.

SIR: I herewith transmit, 1st, a plat and transcript of survey No. 2500, in t'p 45 N., R. 7 E., 5th p'l mrd. of the location under New Madrid certificate No. 161, granted to Joseph Hunot or his legal representatives for 480 acres. The document was returned on the 5th instant by the surveyor general with a copy of your instructions of the 26th August, 1858.

2nd. Patent certificate No. 492, issued for survey No. 2500 in conformity with the above instructions.

3rd. The abstract of certificate No. 492. The necessary annotations to show that certificate No. 404, which had been formerly issued for survey No. 2500, is superseded by certificate No. 492 are made in the books.

Messrs. Ed. Bates and Peter Lindell, of this city, claim the patent.

I am very respectfully, sir, your obedient servant,

ADOLPH BERNARD, *Recorder.*

Thomas A. Hendricks, Esq., Commissioner of the General Land Office, city of Washington.

RECORDER'S OFFICE, ST. LOUIS, *5th February*, 1859.

Patent Certificate No. 492.

It is hereby certified that under the provisions of the second section of the act of Congress approved the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes." Frederick Bates, recorder of land titles in said Territory, issued, on the 12th of August, 1816, his certificate numbered one hundred and sixty-one to Joseph Hunot or his legal representatives four hundred and eighty acres of land, being part of a tract of 640 acres, which had been confirmes to said Hunot, but was proven to have been damaged by earthquakes, and on that account relinquished to the United States. It is further certified that this grant has been located and surveyed in township forty-five north of the base line and range 7 east of the 5th principal meridian, in the State of Missouri, as appears from the accompanying plat and accompanying plat and transcript of survey numbered 2500, authenticated on the 22d of January, 1859, and returned this day to this office by John Loughborough, surveyor general for Illinois and Missouri.

It is further certified that the said survey numbered 2500,
255 to the amount of ninety-five acres and twenty-hundredths of an acre, is interfered with by other claims, to wit, with forty-one hundredths of an acre in survey No. 1663, for Pierre Barribeau: eighty-six hundredths of an acre in survey No. 1664, for Louis Lacroix; three acres and twenty-hundredths of an acre in survey No. 1665, for Louis Laroche's legal representatives; ten acres and eighteen-hundredths of an acre in survey No. 1813, for Vincent Bouis' legal representatives, under Pierre Chouteau; all of which claims were confirmed by the act of Congress approved the 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," and the supplemental act of 26th May, 1824; ten acres and sixty-seven hundredths of an acre in survey No. 1814, confirmed to Baptiste Reviere dit Baccane or legal representatives by the said acts of 1812 and 1824, and also by the act of Congress approved the 29th April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri;" fifty-eight acres and seventy-hundredths of an acre in survey No. 1815, for Peter Lacroix' representatives, confirmed by the said act of 1816, and eleven acres and eighteen-hundredths of an acre in survey No. 3340, confirmed *by* Guillaume Bizet or his legal representatives by the act of Congress approved

the 4th July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes:"

Now, therefore, be it known that Joseph Hunot or his legal representatives is entitled to receive a patent for the three
256 hundred and eighty-four acres and eighty-hundredths of an acre of land, the residuary area of survey No. 2500, after deducting the 95.20 acres which interfere therewith as aforesaid: Provided, however, that this deduction is not intended to preclude said Hunot or his legal representatives to seek a judicial settlement of his or their rights, if any such exist, to the said interfering land.

——— ———,

U. S. Recorder of Land Titles in the State of Missouri.

To the Commissioner of the General Land Office, city of Washington.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 7th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter dated St. Louis, 18th February, 1859, from Adolphe Renard, recorder, to Commissioner of the General Land Office; also of a patent certificate, No. 492, dated St. Louis, 5th February, 1859, are true and literal exemplifications from the record- and files of this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Exhibit No. 8, being certificate No. 492, issued by recorder of land titles to Joseph Hunot or his legal representatives, dated
257 February 18th, 1859, issued in lieu of certificate No. 404.

Pat. Cert. No. 492, *Feb.* 18, '59, *Favor of Jos. Hunot.*

OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, 18*th February*, 1859.

Patent certificate No. 492.

It is hereby certified that from the records of this office it appears that on the 8th January, 1833, Elias T. Langham, surveyor of the public lands in the States of Illinois and Missouri, returned according to law to Frederick R. Conway, recorder of land titles in the State of Missouri, an approved plat and transcript of survey No. 2500, executed on the 23rd June, 1819, of the location made in township 45 north, of the base line, and range 7 east, of the 5th principal meridian, under certificate numbered 161, which had been granted to Joseph Hunot or his legal representatives for four hundred and eighty acres of land on the 12th August, 1816, pursuant to the provisions of the second section of the act of Congress passed the 17th

February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," and that the said recorder on the 2nd February, 1833, issued his patent certificate numbered 404 on said survey No. 2500 for the said 480 acres; and it is further certified that it appears from the accompanying plat and transcript of survey No. 2500, approved on the 22nd January, 1859, and transmitted on the 5th February, 1859, by John Loughborough, surveyor general for the States of Illinois and Missouri, in compliance with the instructions of the Commissioner of the General Land Office, dated the 26th August, 1858 (a copy of which is furnished this office for its government), that the said survey No. 2500 has since the issuance of said certificate No. 404 been in part interfered with by the following surveys of other claims, to wit: Survey No. 1663, for Pierre Barribeau; survey No. 1664, for Pierre Lacroix; survey No. 1665, for the legal representatives of Louis Laroche; survey No. 1813, for the legal representatives of Vincent Bouis under Pierre Chouteau, all of which claims were confirmed by the act of Congress approved the 13th June, 1812, entitled "An act making further provisions for settling the claims to land in the territory of Missouri," and the supplementary act of 26 May, 1824; survey No. 1814, for Baptiste Riviere dit Bacanne or legal representatives, confirmed by the said acts of 1812 and 1824, and also by the act of Congress approved the 29th April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri;" survey No. 1815, for the representative of Peter Lacroix, confirmed by the said act of 1816, and survey No. 3340, for Guillaume Bizet or his legal representatives, confirmed by the act of Congress approved the 4th of July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes."

Now, therefore, be it known that Joseph Hunot or his legal representatives is entitled to receive a patent for the aforesaid survey No. 2500. Saving and excepting therefrom the interferences aforesaid: Provided, however, that *that* this saving and excepting clause is not intended to preclude the said Hunot or his legal representatives from seeking a judicial settlement of his or their rights, if any exist, to said interferences.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

To the Commissioner of the General Land Office, city of Washington.

(Recorded at pages 63 & 64 of Book of Patent Certificates.)

258 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 7th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent certifi-

cate No. 492, dated Saint Louis, 18th February, 1859, issued by Adolphe Renard, United States recorder of land titles in the State of Missouri, in favor of Joseph Hunot or his legal representatives, upon survey No. 2500, in township 45 north of range 7 east of the 5th principal meridian, Missouri, are true and literal exemplifications from the records and files of this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Exhibit No. 9, patent to Joseph Hunot or his legal representatives for survey No. 2500, dated August 30th, 1859, together with the evidence of the record thereof.

259 THE UNITED STATES OF AMERICA:

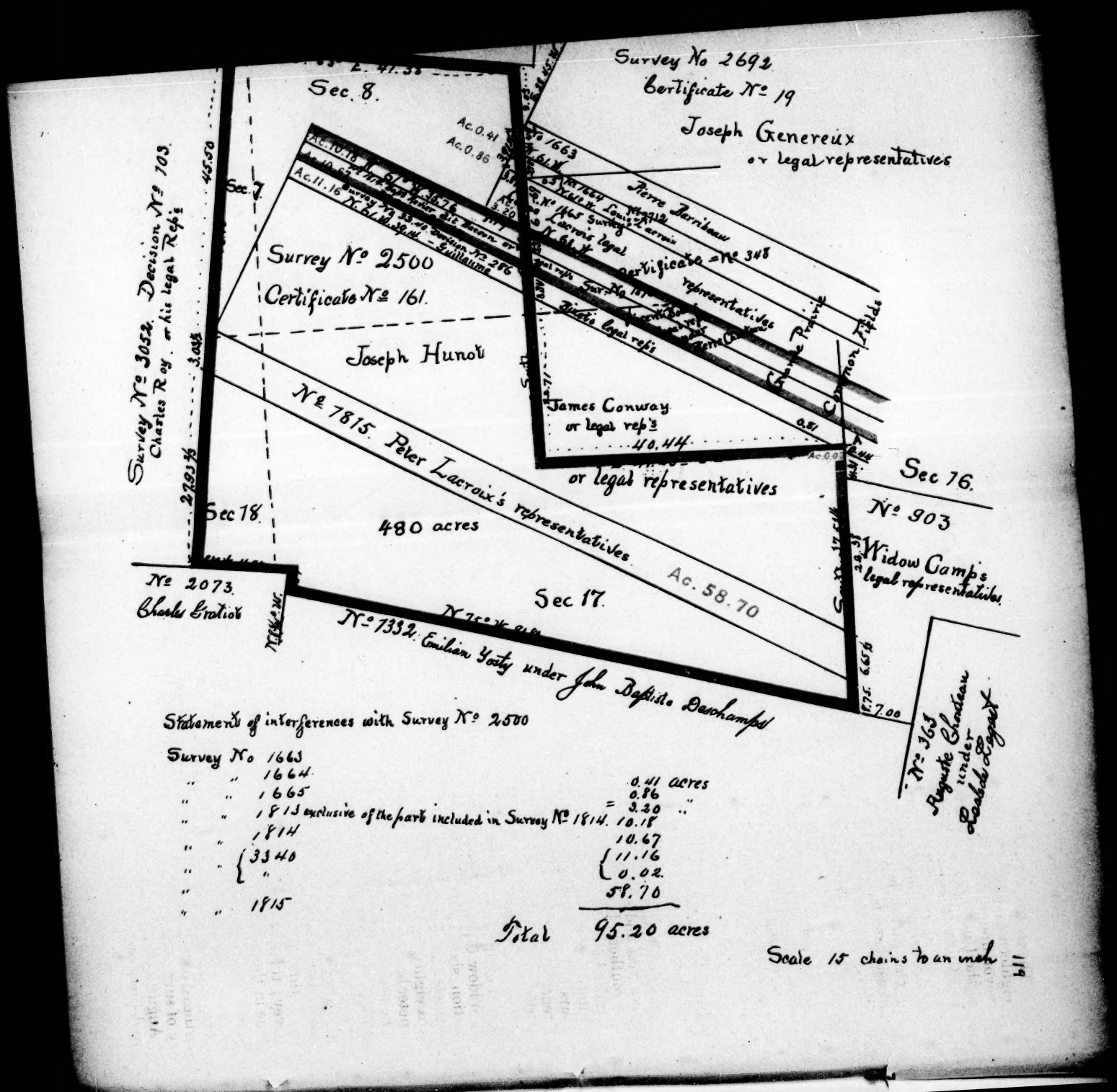
To all to whom these presents shall come, Greeting:

Know ye that there has been deposited in the General Land Office a certificate, numbered four hundred and ninety-two, of the recorder of land titles at St. Louis, Missouri, whereby it appears that in pursuance of the act of Congress approved on the seventeenth day of February, one thousand eight hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," and the several acts of Congress amendatory and explanatory of the same, there has been located for Joseph Hunot or his legal representatives the following tract of land, to wit:

Survey No. 2500.

Plat and description of the survey of a tract of land of four hundred and eighty acres situate in township forty-five north of the base line of range seven east of the fifth principal meridian, in the State of Missouri, this being the tract located on the sixteenth of June, eighteen hundred and eighteen, by Joseph C. Brown for Rufus Easton, the legal representative of Joseph Hunot, in virtue of a certificate, numbered one hundred and sixty-one, issued on the twelfth of August, eighteen hundred and sixteen, by Frederick Bates, United States recorder of land titles in the Territory of Missouri, in conformity with the provisions of the act of Congress of the seventeenth of February, eighteen hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes:"

The location above mentioned calls for including "that part of the fractional section seventeen, in township forty-five north & range seven east (the township in which St. Louis is situate), lying north of the Cul-de-sac fields, fractional section eighteen in the same township, and so much off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity."



Statement of interferences with Survey No 2500

Survey No 1663		0.41 acres
" " 1664		0.86
" " 1665		= 3.20 "
" " 1813 exclusive of the part included in Survey No 1814.		10.18
" " 1814		10.67
" " 3340		11.16
" " "		0.02.
" " 1815		58.70
	Total	95.20 acres

119

The tract so located was surveyed on the twenty-third of June, eighteen hundred and nineteen, by Joseph C. Brown, deputy surveyor, under his contract with William Rector, surveyor of the lands of the United States in the Territories of Illinois and Missouri, dated the thirty-first of March, eighteen hundred and seventeen. The several lines thereof were subsequently remeasured, either in whole or in part, as lines of the adjoining or inte-fering private surveys.

This survey is herein platted and described to conform to those measurements.

(Here follows diagram marked p. 260.)

261 *Description.*

Beginning at a stone in the west boundary of section sixteen, in township forty-five north of range seven east, corner to this survey and to survey numbered two thousand seven hundred and twelve, in the name of James Conway or legal representatives, from which a large stone marked with letter L on the top, said to have been set for corner to the Conway survey, bears east distant seventeen links, thence south, at forty-four links a stone thirteen inches long, ten inches wide, three inches thick, set with the edges north sixty-one degrees west and south sixty-one degrees east, at the intersection with the southern boundary of survey numbered three thousand three hundred and forty, in the name of Guillaume Bizet's legal representatives, from which a black oak seventeen inches in diameter bears north twenty-seven degrees and fifteen minutes west, distant twenty-eight links, and a black oak eight inches in diameter bears north fifty-eight degrees east, distant thirty-two and one-half links; at four chains and seventy-five links a large stone, the northwest corner of this survey, numbered nine hundred and three, in the name of Widow Champ's legal representatives, and a corner to fractional section sixteen, from which a black oak twenty-four inches in diameter bears north sixty-five degrees and thirty minutes east, distant eighty-four links, and a black oak twenty-three inches in diameter bears north one degree and five minutes west, distant seventy-nine and a half links; at twenty-seven chains and thirteen links a stone fourteen inches long, eleven inches wide, three and a half inches thick, the northeast corner of survey numbered one thousand eight hundred and fifteen, in the name of Peter Lacroix's rep-
262 resentatives; at thirty-three chains and seventy-eight and one-third links a stone, the southeast corner of the Peter Lacroix survey; thirty-seven chains and fifty-three and one-third links to a stone in the northern boundary of survey numbered one thousand three hundred and thirty-two, in the name of Emilian Yosty, under John Baptiste Deschamps, the southwest corner of the Widow Camp survey and the southeast corner of this survey, from which the northeast corner of the Emilian Yosty survey, in the western boundary of survey numbered three hundred and sixty-three, in the name of Auguste Chouteau, under Laclede Lequest, bears south seventy-five degrees east, distant seven chains; thence north seventy-five de-

grees west, with the northern boundary of the Emilian Yosty survey, eighty-one chains and eighty links to a stone in the east boundary of Charles Gratiot's survey, numbered two thousand and thirty-seven, the northwest of the Emilian Yosty survey and a corner to this survey; thence north eight degrees and forty-five minutes east with the east boundary of the Charles Gratiot survey two chains and forty-seven links to a stone marked with letters C. G., the northeast corner of the Charles Gratiot survey and a corner to this survey; thence north eighty-three degrees west with the north boundary of the Charles Gratiot survey thirteen chains and fifty-three links to a large stone, the *the* southeast corner of survey numbered three thousand and fifty-two, in the name of Charles Roy or his legal representatives, and a corner to this survey; thence north seven degrees east with the east boundary of the Charles Roy survey, at twenty-seven chains and ninety-three and two-thirds links a stone fourteen inches long, eight and a half inches wide, three inches thick, corner to the
263 Peter Lacroix survey; at thirty chains and ninety-seven links a stone, corner of the Peter Lacroix survey, seventy-six chains and forty-seven links to a large stone, the southwest corner of survey numbered two thousand six hundred and twenty, in the name of Francis Delisle or legal representatives, and the northwest corner of this survey; thence south eighty-three degrees east with the south boundary of the Francis Delisle survey forty-one chains and thirty-eight links to a large stone marked L, corner to this survey and to survey numbered two thousand six hundred and ninety-two, in the name of Joseph Genereux or legal representatives; thence south at nine chains and three links a stone ten inches long, nine inches wide, three inches thick, at the intersection of the western boundary of survey numbered one thousand six hundred and sixty-three, in the name of Pierre Barribeau, from which the southwest corner of the Pierre Barribeau survey bears south twenty-eight degrees and forty-five minutes west, distant three chains and ninety-one and a half links; at thirteen chains and fifty-two links a stone nine inches long, six inches wide, four inches thick, at the intersection with the south boundary of the Pierre Barribeau survey, which is the north boundary of Louis Lacroix's survey, numbered one thousand six hundred and sixty-four, from which the southwest corner of the Pierre Barribeau survey bears north sixty-one degrees west, distant two chains and twelve links; at sixteen chains and thirty links a stone, marked with letter L, on the top of the southwest corner of Joseph Genereux survey and the northwest corner of the James Conway survey; at sixteen chains and eighty-seven links a stone twenty and a half inches long, six inches
264 wide, three and a half inches thick, at the intersection with the south boundary of the Louis Lacroix survey, which is also the north boundary of survey numbered one thousand six hundred and sixty-five, in the name of Louis Laroche's legal representatives, from which the southwest corner of the Louis Lacroix survey bears north sixty-one degrees west, distant three chains and eighty-one links; at twenty-three chains and fifty-six links a stone fourteen and a half inches long, six and a half inches wide, six

inches thick, at the intersection with the south boundary of the Louis Laroch's survey, which is also the north boundary of survey numbered one thousand eight hundred and thirteen, in the name of Vincent Bouis's legal representatives, under Pierre Chouteau, from which the southwest corner of the Louis Laroche survey bears north sixty-one degrees west, distant seven chains and nineteen links; at twenty-six chains and ninety-one links a stone ten inches long, nine inches wide, four inches thick, at the intersection with the north boundary of survey numbered one thousand eight hundred and fourteen, in the name of Baptist Riviere dit Bacanne or legal representatives, from which the northwest corner of the Baptiste Riviere survey bears north sixty-one degrees west, distant thirty-five chains and seventy-six links; at thirty chains and twenty-five links a stone fourteen inches long, ten and a half inches wide, three and a half inches thick, at the intersection with the south boundary of the Vincent Bouis and the Baptiste Riviere survey-, which is also the north boundary of survey numbered three thousand three hundred and forty, in the name of Guillaume Bizet's legal
265 representatives, from which the southwest corner of the Vincent Bouis and the Baptiste Reviere surveys bears north sixty-one degrees west, distant thirty-seven chains and forty-five links; at thirty-three chains and fifty-nine links a stone eleven and a half inches long, eight and a half inches wide, four inches thick, at the intersection with the south boundary of the Guillaune Bizet survey, from which the southwest corner of said survey bears north sixty-one degrees west, distant thirty-nine chains and fourteen links, fifty-six chains and thirty links to a stone, the southwest corner of the James Conway survey and a corner to this survey; thence east with the south boundary of the James Conway survey, at forty chains and forty-four links a stone fourteen inches long, eight and a half inches wide, two inches thick, set with the edges east and west, at the intersection with the south boundary of the Guillaume Bizet survey, from which a black oak twelve inches in diameter bears north seventy-two degrees and forty-five minutes west, distant eleven links forty-one chains, and twenty-five links to the beginning corner.

Statement of Interferences of Survey No. 2500 with Other Surveys.

1. Survey No. 1663, of one and a half by forty arpens, claimed by Pierre Barribeau, confirmed by the act of Congress of the 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," the extent and boundarys proven on the 3d March, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled An act making further provision for settling the claims to land in the Territory of Missouri." The area of the interfering part, 0.41 acre.

266 2. Survey No. 1664, of one by forty arpens, claimed by Louis Lacroix, confirmed by the act of Congress of the 13th

June, 1812, the extent and boundaries proven on the 3d March, 1825, conformably to the provisions of the act of Congress of the 26th May, 1824. The are- of the interfering part, 0.86 acre.

3. Survey No. 1665, of two by forty arpens, in the name of Louis Laroche's legal representatives, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 28th July, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, 3.20 acres.

4. Survey No. 1813, of two by forty arpens, in the name of Vincent Bouis's legal representatives under Pierre Choteau, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 1st June, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, exclusive of the part included in survey No. 1814, 10.18 acres.

5. Survey No. 1814, of one by forty arpens, in the name of Baptiste Riviere dit Baccane or legal representatives, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 28th July, 1825, conformably to the provisions of the act of Congress of the 26th May, 1824, confirmed also by the act of Congress of the 29th of April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri." The
267 area of the interfering part, 10.67 acres.

6. Survey No. 3340, of one by forty arpens, in the name of Guillaume Bizet's legal representatives, confirmed by the act of Congress of the 4th July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes." The area of the two interfering parts, 11.18 acres.

7. Survey No. 1815, of two by forty arpens, in the name of Peter Lacroix's representatives, confirmed by the act of Congress of the 29th April, 1816. This tract is wholly included in the survey No. 2500 and contains 58.70 acres.

All the above surveys are lots in the Grand Prairie common field of St. Louis. They were surveyed in the years 1850 and 1855 by William H. Cozens, deputy surveyor, under instructions dated 9th of May, 1846, and the 22d February, 1855.

OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI, ST LOUIS, *January 22d*, 1859.

The foregoing plat and description of survey No. 2500 are correctly copied from the approved plat and description of said survey, recorded on pages 260, 261, 262, 263, and 264 of Record Book A, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

There is therefore granted by the United States unto the said Joseph Hunot or his legal representatives and to his or their
268 heirs the tract of land as described in the aforesaid survey number two thousand five hundred, hereby expressly ex-

cepting and excluding from the transfer by these presents such valid rights as may exist in virtue of the claims particularly designated under the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th heads in the foregoing, and further saving and excepting from the transfer by these presents of any other valid adverse claims which may exist to any part of the land embraced in the aforesaid survey number two thousand five hundred; to have and to hold the said tract of land, according to said survey number two thousand five hundred, unto the said Joseph Hunot or his legal representatives and to his or their heirs and assigns forever, with the exceptions, reservations, and exclusions as aforesaid.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the thirtieth day of August, in the year of our Lord one thousand eight [SEAL.] hundred and fifty-nine, and of the Independence of the United States the eighty-fourth.

By the President:

JAMES BUCHANAN.
By J. A. B. LEONARD, *Sec'y.*

J. N. GRANGER,
Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November 18th*, 1879.

269 I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent, dated August 30, 1859, for survey No. 2500, issued in favor of Joseph Hunot is a true and literal exemplification of the original patent as the same appears of record in this office in vol. 11, "Record of Donation Patents," on pages 405 to 413, inclusive, and immediately preceding a patent to "Elliot McCulloch and his heirs," recorded in said volume eleven, on pages 414 and 415.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Letters from Jos. D. Wilson, Act'g Com'r General Land Office.

GENERAL LAND OFFICE, *August 30th*, 1859.

The President's secretary for signing patents.

SIR: Your signature is requested to the patent herewith sent, as recorded vol. 11, pages 405 to 413, inclusive, in favor of "Joseph Hunot or his legal representatives," for a private claim in Missouri, survey No. 2500, patent certificate No. 492.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

270 GENERAL LAND OFFICE, *August 30th*, 1859.

J. W. Granger, Esq., recorder of the General Land Office.

SIR: I have to request your signature to the patent herewith, as recorded vol. 11, pages 405 to 413, inclusive, in favor of "Joseph Hunot or his legal representatives," for a private claim in Missouri, survey No. 2500, patent certificate No. 492.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *January 2d*, 1880.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of the records of letters from this office, dated August 30, 1859.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

GENERAL LAND OFFICE, *August 30th*, 1859.

271 J. N. Granger, Esqr., recorder of the General Land Office.

SIR: I have to request your signature to the patent herewith as recorded vol. 11, pages 405 to 413, inclusive, in favor of "Joseph Hunot or his legal representatives," for a private claim in Missouri, survey No. 2500, patent certificate No. 492.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December 28th*, 1881.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter dated August 30, 1859, from Jos. S. Wilson, acting Commissioner of the General Land Office, to J. N. Granger, recorder, in the matter of the claim of Joseph Hunot, in the State of Missouri, survey No. 2500, is a true and literal exemplification of the original as it appears of record in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

272 *Letter from S. A. Smith, Com'r.*

GENERAL LAND OFFICE, *January* 23, 1860.

Honbl. A. B. Greenwood, Commissioner of Indian Affairs.

SIR: I transmit herewith for such disposal as may be proper a patent as recorded vol. II, pages 414, 415, in favor of Elliott McCullough, for his reserve under the treaties of 1842 & 1845 with the Wyandott-s. Said patent is issued in accordance with the approval of the location by the office of Indian affairs of 18th February, 1859.

Very respectfully, your ob't servant,

S. A. SMITH,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 18, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy is a true and literal exemplification of a letter recorded in this office as addressed to the Commissioner of Indian Affairs under date of January 23, 1860, by S. A. Smith, Commissioner of the General Land Office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Copy of Patent to McCullough Heirs.

The United States of America to all to whom these presents shall come, Greeting:

Whereas by the fourteenth article of the treaty between the United States of America and the Wyandott- Nation of Indians, made and concluded at Upper Sandusky, in the State of Ohio, on the seventeenth day of March, one thousand eight hundred and forty-two, as ratified on the fifth day of October, one thousand eight hundred and forty-two, the United States agreed to grant to "Elliot McCulloch" one section of land of six hundred and forty acres "out of any land west of the Missouri river set apart for Indian use not already claimed or occupied by any person or tribe;" and whereas by the ninth article of the treaty with the same tribe, made and concluded at the city of Washington on the thirty-first day of January, one thousand eight hundred and fifty-five, "it is stipulated and agreed that each of the individuals to whom reservations were granted by the fourteenth article of the treaty of March seventeenth, one thousand eight hundred and forty-two, or their heirs or legal representatives shall be permitted to select *and* said reservations on any Government lands west of the States of Missouri

and Iowa subject to pre-emption and settlement, said reservations to be patented by the United States in the names of the reservees as soon as practicable after the selections are made;" and it is declared in said article that "the reservees, their heirs or proper representatives, shall have the unrestricted right to sell and convey the same whenever they may think proper; but in cases where any of said reservees may not be sufficiently prudent and competent to manage their affairs in a proper manner, which shall be determined by the Wyandotte council, or where any of them have died leaving minor heirs, the said council shall appoint proper and discreet persons to act for such incompetent persons and minor heirs in the sale of the reservations and the custody and management of the proceeds thereof, the persons so appointed to have full authority to sell and dispose of the reservations in such cases, and to make and execute a good and valid title thereto;"

And whereas it appears from a return dated the eighteenth day of February, one thousand eight hundred and fifty-nine, from the office of Indian affairs to the General Land Office, that there has been selected and approved as the reserve of the said "Elliot McCulloch," under the treaty stipulations above mentioned, the
273 following-described tract, to wit: Section twenty-eight, containing six hundred and forty acres, in townships twelve south of range seventeen east of the sixth principal meridian, in the Territory of Kansas:

Now, know *know* ye that the United States of America, in consideration of the premises and in conformity with the provisions, as above recited, of the aforesaid treaties, have given and granted and by these presents do give and grant unto the said "Elliot McCulloch" and to his heirs the tract of land above described; to have and to hold the said tract, with the appurtenances, unto the said "Elliot McCulloch" and to his heirs and assigns forever, in conformity with the provision of the treaties as aforesaid.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth.

By the President:

[SEAL.] JAMES BUCHANAN,
By J. A. LEONARD, *Sec'ty.*

JOS. S. WILSON,
Acting Recorder of the General Land Office ad Interem.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 18, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent dated December 29th, 1859, issued in favor of Elliot McCulloch and his

heirs, is a true and literal exemplification of the original patent as the same appears of record in this office in vol. 11, "Record of Donation Patents," on pages 414 and 415, immediately succeeding a patent to Joseph Hunot recorded in said volume eleven, on pages 405 to 413, inclusive.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Also the maps and plats made by Mr. Cozens, deputy surveyor of the United States.

(Omitted as per stipulation.)

By Mr. JEWETT: We object as not being correct maps of the Government.

By the COURT: There has been no evidence to authenticate those maps.

Testimony of W. H. Cozens.

W. H. COZENS, a witness called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By MATHEW G. REYNOLDS, Esqr.:

274 Q. What is your name?

A. W. H. Cozens.

Q. How old are you, sir?

A. I am 69 years old, sir.

Q. How long have you been residing in the city of St. Louis?

A. I was born in the city of St. Louis. I have been here all my life.

Q. What is your occupation?

A. Land surveyor and civil engineer.

Q. How long have you been engaged as a land surveyor and civil engineer here in the city of St. Louis?

A. About 53 years, sir.

Q. During that time were you in the employ of the Government?

A. I have been, sir.

Q. For how long a time?

A. I have held my commission for about 25 years or 30 years.

Q. Are you still deputy surveyor of the United States Land Office?

A. Yes, sir.

Q. Are you that now?

A. Yes; I hold my commission yet.

Q. (Presenting a map.) I will get you to state if you ever saw that map. That is one of your make?

A. That is my plat, sir.

Q. I will get you to state if that map contains a correct location of the different lines of survey No. 2500, as you understand it.

A. This is intended to represent the southern portion of the Grand Prairie Common Fields addition to St. Louis, lying to the west of the city—the old.

Q. I will get you to state whether or not this is a correct representation of the official surveys as made by you.

A. That is intended to represent that fact, sir, with the subdivisions of a part of the Lindell tract, as in that Hunot location, on the top of the Grand Prairie field—the western portion of that sub-
275 division and partition.

Q. I will get you to state if you know where the Grand Prairie common fields are in St. Louis—what are known as the Grand Prairie common fields—and if you have had occasion, under instructions, to run lines around them.

A. I have, sir.

Q. Will you indicate on that map the line of the Grand Prairie common fields, as surveyed by you from time to time, and explain to the court?

A. This line represents the eastern boundary of the Grand Prairie—that is, coming from the northward and intersecting the north line of survey 903, in the name of Ann Camp.

Q. Now come to the western limit.

A. The western boundary is represented at this place (pointing on the map), including lot one, southward to lot 11, inclusive, as the western boundary of these same common fields. At the dividing line between lots 11 and 12, which shows an extension to the west-ard of nine arpens and some number of French feet in excess of the westward corresponding boundary, with another smaller projection along the northern line of the Chancelier tract and in line with that, and an extension to the westward along the south line of the tract, extending westward nine arpens and some odd feet—I think it is about 36 French feet That was the extension.

Q. I was asking you about the line extending westward.

A. That line there (pointing) extended southward parallel to the eastern boundary until it intersected the east line of survey No 3032, in the name of Charles Royce.

Q. Now indicate, if you can, on that map, by this pencil, where lot 46, of Peter Lindell's second addition, is, if you can.

A. It would be here, east of 50. There is another map you have that represents these lots. This map is made to represent
276 the boundary of lot 50.

Q. (Exhibiting map No. 2.) Examine this map No. 2. Now, on this map indicate where lot 46 of Peter Lindell's addition is.

A. It lies east of 50, and is bounded on the north by Maryland avenue, on the east by Cornelia, now known as Newstead, and on the south by Lindell avenue. Here is Taylor avenue, here.

Q. Now, I will get you to state whether or not lot 46 lies within the Grand Prairie common fields, adjacent to the city of St. Louis.

A. It lies within the outboundaries of lines drawn to include all

these fields—on the Grand Prairie common fields—that I surveyed, no matter whether the offset be made to the westward or not.

Q. It lies east of the western limit of the Grand Prairie common fields under all the surveys?

A. Yes; they are a prolongation of the west lines—from lot No. 11 southward or the west line of lot 12 southward.

Q. This map was made by you as deputy surveyor?

A. Yes; that map was made by me.

Q. You certified to it as deputy surveyor?

A. Yes, sir.

Q. That map is correct according to the records of the land office and surveys made by you as such?

A. Yes, sir.

Q. I will get you to state if you knew Peter Lindell during his lifetime.

A. I have known Mr. Lindell since about the year 1833 up to the time of his death.

Q. Since when did you know of his having possession of what is known as survey No. 2500, if at all?

A. He had possession of what is known as survey 2500 for many years prior to his death and had it enclosed.

277 Q. Do you know whether or not this piece of ground, lot 46, was within the enclosure that he had?

A. Yes; the farm and most of the cultivation was immediately around that vicinity—around Big Springs—east and west and south. He had it all enclosed.

Q. You have been examined in reference to these land-grant cases a number of times before, hav'n't you?

A. Yes; I have testified often.

Q. You have had your attention called in the deed made by the sheriff, John K. Walker, in 1823, to this Hammond tract of land, haven't you?

A. I have read it, sir.

Q. I will read it to you again, Mr. Cozens. "The following real estate: A tract of land containing 240 arpens, more or less, bounded on the south by Gratiot and Phillipson, on the west by the land of John P. Corneau, on the east by the land of William Stokes and enclosing the Big Spring, known as the Hammond Springs tract." I will get you to state whether or not you have ever had occasion to identify and survey that land by that description.

A. I have, sir.

Q. I will get you to state whether or not you are able to find out and run the lines for Peter Lindell here.

A. Yes, sir.

Q. I will get you to state whether or not that land was known and could be identified by the citizens at that time under that description.

By Mr. JEWETT: I object to that. This deed was made in 1823. Mr. Cozens was just born in 1823 or was a small boy. Of course

he knew nothing about it. The question is what the sheriff did in 1823; not what Mr. Cozens knew in 1833 or '35.

Question waived.

Q. (Map No. 3.) Did you make that map?

A. I did, sir.

278 Q. I will get you to state whether or not that shows the subdivisions of survey 2500 as partitioned among the heirs of Peter Lindell as the second addition to the city of St. Louis.

A. It does, sir; that map shows the correct location, according to the Government surveys and records, of survey No. 2500 and the conformed claims.

Q. It shows the confirmed claims?

A. The confirmed claims; yes, sir.

Q. You identify block 46 on there, do you?

A. Yes, sir.

Q. That block 46 came within the approved and confirmed claims, did it not?

A. No, sir.

Q. It did not?

A. No, sir.

Q. It came within the limits of the Grand Prairie common fields, though, did it not?

A. Yes, sir.

Q. Have you had occasion to survey that Hunot claim a number of times?

A. Yes, sir; I have run every line of it for years back. I am familiar with every line of the premises.

Q. Were these surveys that were made from time to time official?

A. Some were and some were not.

Q. The survey known as the Hammond survey?

A. That was a United States survey.

Q. You run the lines around the common fields under instructions from the United States Government?

A. Yes, sir.

Q. You locate the western limits of Grand Prairie common fields beyond this lot?

A. Yes; beyond lot 46.

Q. And the eastern line of the Grand Prairie common fields you locate east of it?

A. Yes, sir.

Q. And the north line north of it?

A. Yes, sir.

279 Q. And the south line south of it?

A. Yes, sir.

Q. How early do you remember of Peter Lindell having his property enclosed as his farm?

A. He was out there, I know, in 1833 and in 1836 and '37, and he erected a fence enclosing the whole entire tract and land to the eastward; not only enclosing survey 2500, but that portion east of the tract in the Grand Prairie common fields.

Cross-examination.

By D. T. JEWETT, Esq.:

Q. Mr. Cozens, at whose request did you make this No. 2 map?
A. At Gen. Henderson's.
Q. At whose request did you make that one, No. 1?
A. That one at his request; they were copies of some old maps that I had.
Q. In this map, Mr. Cozens, you have laid down the Corneau lots as running across block 46 here, haven't you?
A. Yes, sir; the confirmed and unconfirmed claims, all of them.
Q. You platted down unconfirmed claims across that lot, did you?
A. Yes, sir.
Q. But on this map, which you divide into blocks here, you did not put down any Corneau lots as located across survey of block 46, did you?
A. I did not lay down unconfirmed claims; no, sir.
Q. You did not make an official report to the Government and the Government did not recognize anything but confirmed claims, did they, in the old survey?
A. I made an official report of all I did.
Q. The Government did not recognize anything as an official survey unless you found an official claim to cover it?
A. They did not confirm any of the surveys that were
280 unconfirmed; they did not make a record of them.
Q. They did not recognize them as Government surveys, did they?
A. They ordered me to make them.
Q. That ain't my question, Mr. Cozens. Did not your instructions direct you not to survey anything but confirmed claims?
A. No, sir.
Q. You are mistaken, Mr. Cozens?
A. They said I should keep a record of all the evidence I could get, of the confirmed as well as the unconfirmed.
Q. That is, you were to furnish them with evidence that you used, so that you could locate those that were confirmed? Didn't they expressly instruct you not to make an official survey of unconfirmed claims?
A. I don't know how you would divide my acts between official and unofficial. I had to obey orders or I got no pay.
Q. You do not mean to say that the Government has ever recognized that there was a Hammond concession of that land that covers block 46?

Objected to as a legal conclusion.

A. They made no record of the survey I made.
Q. Then there are no Corneau lots running across block 46 that you surveyed and the Government recognized your survey?
A. No.
Q. Now, the south claim: Look at this map, if you please (No. 3)—the south confirmed claim that you surveyed is what, Mr. Cozens?

What is the number here—the one next north of this block—this one here (pointing on the map)?

A. This one here. That is Bizette.

281 Q. This south claim you surveyed before you got down to the Lacroix?

A. Yes.

Q. That is the only claim that the Government recognized as a confirmed claim until you get down to the Lacroix, isn't it?

A. The only one that is confirmed.

Q. The next one that is confirmed, that they recognized, is the Lacroix, is it not?

A. Yes, sir.

Q. Then between the Bizette and the Lacroix there was no claim recognized by the Government?

A. None recorded, sir.

Q. None recorded or recognized as a claim?

A. None, sir.

Q. This block of land lies between the Lacroix and the Bizette, does it not?

A. Yes, sir.

Q. About how far from each of them is it?

A. About midway, sir.

Q. About midway between the Lacroix and the Bizette?

A. It is nearer Bizette than it is Lacroix.

Q. About how far distant is that from each of these claims—about how far east from the Lacroix?

A. Taking that point there, it is about 540 feet.

Q. South of the Bizette tract?

A. Yes, sir.

Q. And the Bizette tract is the south one that you surveyed up there?

A. Yes, sir.

Q. How far is it north of the Lacroix tract, which you surveyed?

A. It took a curve across here. It is a greater distance.

Q. Is it over five hundred feet away?

A. It is nearly six hundred feet.

Q. Then there is no recognized confirmed Government claim within five or six hundred feet of this block, is there?

282 A. No, sir.

Q. This map here corresponds with what we call the Mossberger map?

A. Yes, sir.

Q. The Mossberger map was not intended to represent anything but Government recognized surveys, was it, Mr. Cozens?

A. Mossberger was a clerk in the surveyor general's office at the time I executed this survey. When I got through he made a copy of the plat of this township, including all I had surveyed and this that had been surveyed prior to that time by other surveyors.

Q. This is recognized as a correct location?

A. All the surveys of the Government are recognized as correct surveys.

By Mr. REYNOLDS:

Q. Was this map ever approved, Mr. Cozens—this Mossberger map?

A. It represents the confirmed and unconfirmed claims, as I did on my map.

Q. There is no unconfirmed claims in there?

A. No, sir; there is no unconfirmed claims there; that is the Bizette tract and this is the Lacroix tract (pointing).

Q. That tract is between these two tracts?

A. Yes; about there (pointing on the map). That was made after my first report; that report was sent back to make additions subsequently.

Q. You notice your instructions say you are not to survey the unconfirmed claims?

A. My instructions say, "Run end lines to the unimproved unconfirmed claims, so as to make the connection between those that are confirmed, and for the purpose putting in the section posts."

Q. They gave you a list of claims that you were to survey,
283 did they not?

A. Yes, sir.

Q. Now that list of claims that you had to survey, none of them, as surveyed by you, run across this block?

A. None, sir.

Q. These are all the claims you did survey, ain't they, Mr. Cozens, as a Government surveyor, in this matter?

A. There are some in this list I did not survey.

Q. There is no others that you did survey that are not in that list? That is what I want to get at.

A. No, sir.

Q. None of these run across this block, you say?

A. I surveyed the confirmed as well as the unconfirmed?

Q. You did not return an official survey that was recognized by the Government, except this list here?

A. I returned all of them. It was for the office to decide whether they were approved or not approved.

Q. They did not approve any except this list?

A. I have said that several times already. It was my duty to report them, for they said I should, and they gave me all this extra data to find them out.

Q. Will you be good enough to tell us what evidence you found of location of these common-field lots in Spanish times? In other words, upon what do you base your testimony that these common-field lots run to Taylor avenue and did not run any farther—ran to a certain distance east? On what evidence do you base your opinion of the location of those lots?

A. My instructions said I should measure back to the precise point of forty arpens, which I did, from the east boundary.

Q. What did you recognize as the east boundary?

284 A. It was marked with stone all the way through.

Q. I understand you, it was marked?

A. It was marked with Spanish stone or French at the corners, under each of which stone was placed a double handful of cinders from a blacksmith shop, technically called in French "*marsh faire*" or cinders. There is no other English word for it. It is the residuum of iron chips falling from the hammer in beating hot iron. That — what was put in them, and it was considered to be more indestructable than the corners themselves. I found the stone, in some instances, all crumbled into small pieces in the hole, but in digging them up I found these cinders indicating the corners for the east boundary.

Q. That was your information as to the eastern boundary from these Spanish surveys, as far as it went? The eastern boundary had been heretofore east of Taylor avenue?

A. Yes; it was a little in excess of 40 arpens. The office had heretofore approved of a line which was found at the center of what is now called Taylor avenue. That was about 70 feet in excess of what I found it. My instructions said I was to measure the precise quantity of forty arpens. That is the reason why my line does not quite reach the center of Taylor avenue.

Q. How far east of the east line does it reach?

A. 48 feet east of the east line.

Q. Now, that east line of the common fields, as you call it, as you travel east, east of the east line of Taylor avenue?

A. Forty arpens and forty-eight feet east of the east line of Taylor avenue.

285 Q. And what you call the west line of the common fields is, as you surveyed it finally, about the center of Taylor avenue, under your last instructions?

A. I did not survey it finally. The office would not let me do it.

Q. Then the east line of the common fields, as you surveyed it, is a little east of the east line of Taylor avenue east?

A. The west line.

Q. The west line of the common fields?

A. Yes; 48 feet.

Q. Is 48 feet east of the east line of Taylor avenue?

A. About that.

Q. That you call the western boundary of these common fields, do you?

A. Yes; my instructions required me to report the tract.

Q. You found this line of old cinders mainly to the east line of the survey?

A. To the east line; yes, sir.

Q. Did you find some on the west line as the old surveys made it?

A. I found some just south of this block 46.

Q. Did you find them running down to there?

A. (Pointing on the map.) A. No; I did not find any, except two or three years afterwards.

Q. Except two or three years after you made the Government survey?

A. Yes, sir; in laying out the boulevard and grading it and macadamising it and planting trees I discovered them.

Q. You hunted up the old records, I suppose?

A. I went over every archive that I could find, both in the United States recorder's office and in our county recorder's office.

Q. You were not present and was not old enough to take
286 part in this business at the time this commission of 1824 was sitting, I suppose?

A. No, sir; I was only four years old.

Q. There were none of these common-field lots surveyed when you commenced, in 1846, was there, except some few in the north end?

A. How will you qualify the word "surveyed"?

Q. Well, recognized and recorded surveys, platted and recognized by the Government.

A. You mean official surveys of the Government?

Q. Yes; official surveys of the Government.

A. No, sir.

Q. Up to 1855 there was no official surveys by the Government of any portion of that land from here (pointing) up north, was there?

A. There was some as far south as the Calve tract.

Q. Which Calve tract have you reference to? There are two of them.

A. The north one, sir. Cook avenue is located on the north line of the Calve tract and Finney avenue is located on the south line. There was another arpent that was surveyed immediately south by the United States Government before I began and one south of Finney avenue.

Q. How far is that north of this line?

A. A long distance.

Q. Two miles?

A. No; half a mile.

Q. Then there were no Government surveys within half a mile of this land when you commenced?

A. No, sir; I began with the Journegan, to the southward.

Q. That is about a half a mile north of this block?

A. Yes; this is located immediately back here (pointing).

Q. Were there any Government surveys south of these Grand Prairie common-field lots?

287 A. Not in the Cul-de-sac of the common fields, but in the Cul-de-sac proper; I don't know.

Q. Then the Grand Prairie common fields, as you call it, had no surveys in 1855?

A. No surveys on it. They — cultivated. You could not get in without crossing gates and getting over fences.

Q. When you surveyed it?

A. Yes, sir.

Q. You commenced in 1855, or was it 1845?

A. In 1849.

Q. At that time the Grand Prairie was fenced up, was it?

A. All fenced up.

Q. Hunot was then in possession at that time?

A. Yes, sir.

Q. Mr. Cozens, please look at this map (handing a map to the witness).

A. That is the location of Hammond's house and springs.

Q. Will you be good enough to state how far what they call Hammond spring is distant from the east line of the Hunot survey?

A. Measured along Maryland avenue, it is 626 feet to the Hammond spring. It is about four hundred feet to the line. That running south would strike the old remains of the Hammond house.

Q. The old Hammond house was not on the Hunot track, was it?

A. No, sir.

Q. It was about six hundred feet east of it?

A. About four hundred feet east of it. The spring is six hundred feet.

Q. A description which located the Hammond spring as being on the Hunot tract in 1823 would not be correct, would it?

A. It was not on the Hunot lot; it was on the Conway lot.

Q. From four to six hundred feet east?

A. Yes. The spring is six hundred feet east of it.

Q. When did you first make the Hunot survey, Mr. Cozens?

A. I run around the Hunot survey in 1843 for Mr. Peter
288 Lindell. I think it was in 1839, sir. In 1839 we first run out that boundary.

Q. That was another Hunot survey?

A. Another Hunot survey.

Q. Lindell claimed not only the Stokes part, but the Hammond part?

A. He claimed all the way from this east point way westward; it was all his property clean out to what is now called King's highway and Forest park.

Q. The Hunot survey touches the King's highway?

A. From Forest park eastward to Garrison avenue; he claimed the Hunot and he claimed the Conway, and then he claimed the Ann Camp.

Q. Those were the tracts you surveyed for him?

A. Yes; I surveyed the entire tract for him and put down very large stone corners and put the letter "L" about nine inches long on the top of each stone. It took three men to put them in the ground. When he did a thing he did it thorough.

By Mr. JEWETT: I will offer in evidence this map No. 4.

Redirect examination.

By Mr. REYNOLDS:

Q. This Hammond spring and the old Hammond house, at the time they were occupied there, the boundaries of the Conway tract and the Hammond tract, was rather a vague and indefinite line, was it not?

Objected to.

Question waived.

Q. What was the character of the country there, as far as the lines between these tracts were concerned?

A. The object of the survey was to define the lines; we were three months doing it.

Q. Prior to that time it was not known whether or not the
289 remains of the old Hammond house and the Hammond springs were on the Hammond tract or on the Hunot tract?

By Mr. JEWETT: I object, because he cannot know that until he became acquainted with the common fields. Ask Mr. Cozens after 1833 down to the time of the survey; he don't know what was known prior to that time.

A. I surveyed it in 1839. I know the lines now.

Q. There were not any lines there then?

A. No.

Q. There was nothing definite about the lines out there bounding the Hunot and the Ann Camp tract?

A. No, sir; he was cultivating both sides of the line at the time he owned it.

Q. Now, I will get you to state, Mr. Cozens, when you were ordered to survey the Grand Prairie common fields and these private claims you were ordered to keep up the continuity of the west line of the Grand Prairie common fields?

A. Yes; the east and west lines, both.

Q. And in doing that the west line of the Grand Prairie common fields fell about Taylor avenue?

A. Yes, sir.

Q. You say that the line as it was first run was forty arpens west of the east line of the Grand Prairie common fields, and you established the line about 48 feet east of the east line of what is known as Taylor avenue?

A. Precisely.

Q. And they instructed you to run to Taylor avenue?

A. No, sir; I wanted to do it, but they would not let me.

Q. After your report was made what was done about moving the line of the Grand Prairie common fields?

A. After I had made my report then another surveyor
290 came in; the tract was in Conway. I made my report to Merriwether. Then afterwards I was instructed by a succeeding surveyor general, Mr. James Loughborough, to go up in the field and remove the line south of the Bierbeau claim, which is the central line of Olive street, and move it out westward. I had two orders, in 1850 and 1857. I reported in 1850 and in 1857 both. I was then instructed to do that, but I declined. Then the surveyor general said, "I will not pay you a cent for what you have done; I will force you to go." He says, "I will pay you extra for it, ten dollars a day for your experience." I obeyed the instructions and they gave me a man, Mr. Frederick Mossberg, who was a deputy in his office, but he became addicted to drink. He accompanied me and was very officious; he was a good man in the office, but he

knew nothing about line surveying. I got tired of him and I got him into a saloon and left him there until I finished the survey.

Q. By that survey you fixed the west line of the Grand Prairie common fields out there?

A. Yes; nine arpens and thirty-six French feet west of this point here (map).

Q. Now I will get you to state whether or not that survey was ever approved.

Objected to.

WITNESS: The records show that.

Q. I will get you to state if that was the only approved survey that exists to-day.

A. Yes; the other ones were never approved.

By Mr. JEWETT: You are mistaken; that of 1855 was approved also.

A. Yes; that of 1855 and of 1857.

By Mr. REYNOLDS:

291 Now, just name any unconfirmed claims you see here Peter Map No 1 in red ink. st run

A. They are written there.

Q. What do these names represent?

A. They all represent the names of parties claiming by possession who had deeds recorded, claiming a cultivation and possession prior to 1803; those claiming under possession from 1803.

By Mr. JEWETT: That testimony is objected to.

By Mr. REYNOLDS:

Q. How did you get these names, Mr. Cozens?

A. I went to the records, sir.

Q. The records of the surveyor general's office?

A. The surveyor general's office, or recorder of land titles, and to our records here and the French archives—French and Spanish—and all I could find; and I had witnesses on the ground.

By Mr. JEWETT:

Q. Mr. Cozens means the names of those he surveyed.

WITNESS: Yes, and unconfirmed.

By Mr. REYNOLDS: I will call your attention to a copy of Exhibit No. 43, which is a copy of Cozens' survey of the Grand Prairie common fields, with the acts of the Commissioner of the General Land Office and the Secretary of the Interior and of the surveyor general of Illinois and Missouri, and so on. You stated awhile ago that you surveyed this under orders.

A. Yes, and precisely located every one of them and put down the corners of every one of them, and some of them are there yet; all the unconfirmed claims as well as the confirmed claims.

Q. What I want to know is whether the west line of these Grand

Prairie common fields, as it stood approved, is by this map
292 moved nine arpens and 36 French feet west of the old line.

A. That is it, sir.

Q. The old line being about Taylor avenue?

A. About Taylor avenue.

Q. This map was made by you and returned to the Commissioner of the General Land Office, with your report?

A. Yes, sir.

Q. The map was made by you, was it?

A. Yes; that is my report.

Q. These claimants of unconfirmed claims were on account of possession or cultivation, or something of that kind, prior to 1803?

By Mr. JEWETT: How does he know that?

The WITNESS: Permit me and I will give you a statement that the map bears out. After I made my first report representing the confirmed and unconfirmed claims, the department here in St. Louis gave me special instructions to go back to the fields and locate every field that I could by possession and cultivation and to locate all the springs and give the names of the springs as they were generally known by the older inhabitants. They were all entered and their location was determined by means of contiguous surveys nearest to them.

Q. This unimproved, unconfirmed property lying east of Taylor avenue is property that was never confirmed to claimants that had been in possession and had it under cultivation prior to 1803?

A. They were not confirmed.

Q. It is property that was not confirmed?

A. Not confirmed.

Q. They had never been cultivated prior to 1803?

By Mr. JEWETT: He don't know that.

293 The WITNESS: I didn't see the individuals cultivate them. I saw evidence of cultivation, and I took the testimony of witnesses. I was so instructed to do. In other words, was ordered to do it.

Q. And you proved it?

A. I proved it, and I took testimony on the ground. I walked over the ground, in and out.

By Mr. JEWETT: I object to Mr. Cozens testifying what witnesses told him concerning what he didn't know at all, and we cannot guess in court.

By the COURT: I think that is hearsay evidence.

By Mr. REYNOLDS:

Q. The question is whether there was any evidence of possession or cultivation.

By Mr. JEWETT: Mr. Cozens testified to what he saw with his own eyes, and I don't object to that. I object to what men told him—old cranks who might have been stuffed with whisky by people who wanted to make out a claim. What Mr. Cozens saw,

I suppose, may be admitted as competent testimony for what it is worth.

By the COURT: I think Mr. Jewett's objection is proper.

By Mr. REYNOLDS: I will get you to state whether or not you found any evidences of either possession or cultivation prior to 1803.

By Mr. JEWETT: You are going into new matter in this examination.

WITNESS: There were evidences of cultivation well marked and well determined by the plow on the cultivated land. The ground was grown up with hazel brush, briars, and other kinds of bushes.

294 That section of the country was all grown over, and the earth had not been disturbed from the day they ceased to cultivate down to the time of making this survey in 1849. I think I have testified to these facts before—that the cultivation was shown to me by the inhabitants.

By Mr. JEWETT: I object to what the inhabitants showed you and I object to what the inhabitants told you. What you saw with your own eyes is competent.

By the COURT: I think that is hearsay.

Mr. Reynolds offers in evidence stipulation.

Stipulation.

STATE OF MISSOURI, }
City of St. Louis. }

In the Circuit Court of the City of St. Louis.

DAVID L. HAMMOND *et al.*, Plaintiffs, }
vs.
CONNECTICUT MUTUAL LIFE INS. CO., Defendant. }

It is hereby agreed and stipulated that in the trial and proceedings in the above-entitled cause depositions and testimony taken and used in the trials of the several cases of John C. D. Block *vs.* Jas. L. D. Morrison *et al.*, David L. Hammond *et al. vs.* Ann E. Gordon and Academy of Christian Brothers, defendants, and John T. Davis *vs.* D. T. Jewett *et al.*, defendants, relating to the title, &c., to lands in the United States survey No. 2500, in the city of St. Louis, may be used in the trial and proceedings in the above-entitled cause with the same force and effect and none other and subject to

295 the same objections to relevancy and competency as if the same depositions and testimony had been taken in the above-named case of Hammond *vs.* Connecticut Mutual Life Insurance Company.

This 10th day of January, 1889.

D. T. JEWETT AND H'Y H. DENISON,
Att'ys for Plaintiff.

J. B. HENDERSON,
REYNOLDS AND LEWIS, *Att'ys for Defendant.*

Mr. Reynolds offers in evidence the testimony of Mr. Blood. See Hammond *vs.* Gordon, page 149; Coleman Record, 343.

296 SULLIVAN BLOOD, being duly sworn, testified as follows:

Direct examination by Mr. HILL:

Q. How long have you been a resident in St. Louis?
A. I came here in 1817.
Q. What was your age when you came here?
A. I was nearly twenty-two.
Q. Are you familiar with this section of country, this fence they have been talking about, this side of King's highway, and that old road and the Hammond spring?
A. Yes, sir; I know the Hammond Spring tract very well.
Q. Did you know it in 1823?
A. Yes, sir.
Q. Had you at that time any official position that required you to look at property?
A. I was constable of the township of St. Louis, city and township of St. Louis, which extended all over the county—the jurisdiction did. Then, at the same time, I was deputy sheriff for Mr. Walker.
Q. The sheriff who sold this property in 1823?
A. Yes, sir.

By Mr. JEWETT:

Q. Were you deputy at that time, in 1823?
A. I believe so—that is to say, I was deputy in this way: I did not attend to the business steadily altogether; I was constable of the township, and if the sheriff had any business to do I done it for him as deputy.

Mr. HILL (showing map to witness): This is the location of Joseph Hunot here, running down to that point colored in blue. It commences here and runs around here. Here is the King's highway here; there is Cabanne's there; here is the south line; this is that property conveyed to Stokes, which we have given in evidence, by deed of 1819 conveyed to Stokes, a tract of — containing 234 acres of land. Here is the balance of that tract, containing 240 acres, more or less. You have heard the testimony in this case that has been given this afternoon in regard to the location of these tracts of land. Here is the Marie spring—the Hammond spring; here the forks of these roads; that is the one to Cabanne; this forks here, and that to the King's highway; here is the survey for Conway. Now, I will show you another map (exhibiting another map to the witness). These are simply projected lots of the Bisette or Provenchere cultivation; this is the Marie cultivation of Boise. I call your attention to the testimony of witnesses that represent this land as lying east and west instead of running six acres north, which would bring this Bisette tract so that it would just about come on the south line of this lot—about that far on the south line of this

Stokes property (indicating). I call your attention that the furrows of this cultivation run east and west, and that Boise included this spring, and the Provenchere was south of it two arpens, and that Provenchere sold to Philipson. Here is a deed to Philipson of the Provenchere tract of land. (A translation of the deed was then read by Mr. Hill.) The date of this deed is the 25th of July, 1816, signed "Mary Provenchere," the widow of John Provenchere. Now, this is the conveyance by them to Philipson and Labadie. Labadie conveys to Philipson in 1818 by precisely the same description. These deeds I give in evidence, and I will hand them to the court.

Q. Now, Mr. Blood, with all these facts before you and with your knowledge of this tract of land and these deeds, for I understand you to say you have been out on the land yourself?

A. A few weeks ago; yes, sir.

Q. And were there in the early days when Hammond was there; in 1820 or 1823?

A. I was there in 1819. I recollect on that same tract of land they had a celebration there on the Fourth of July, at that very spring, I think, in 1819; I don't know but 1818.

Q. Was Hammond then living there, or was there any house there?

A. There was a house there; there has always been a house there, or a cabin.

Q. There was a cabin at that time you had the barbecue or celebration?

A. Yes, sir.

297 By Mr. MORRISSON:

Q. How far was the house from the spring?

A. It set back on the hill, the cabin, three hundred feet, I should say; three hundred, more or less.

Mr. HILL: Now, I will read the description in the advertisement: "Containing two and a half arpens front by forty deep; also lot 240 arpens west of St. Louis, bounded south by land of Gratiot and Philipson, west by land of Cabanne, and east by land of Stokes and others." That is the description in the advertisement; now I will read the description in the deed: "A tract of land containing 240 arpents, more or less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond spring."

Q. Can you locate it on this map by this description?

A. Well, sir, the Hammond spring—I should think that it contained just the same ground as the Hammond spring; that is all I know about it. The Hammond spring belonged to old Samuel Hammond at this time, supposed to belong to him. It was levied on by the sheriff and sold as such, and I suppose that is the description of this land.

Q. Would the community in that day have understood where this land was situated by this description?

A. I don't think there is much doubt of it.

Q. Which is the land claimed under the sheriff's deed?

A. Yes; what was known as the Hammond land there and the Hammond spring.

Q. And the Hammond spring is outside of this tract, but this land was known as the Hammond land, you say, at that time?

A. Yes, sir.

Q. And under this advertisement would the people at that time have known what land was being sold, in your opinion, in this community?

A. I should suppose they would—I should think so.

Q. You knew it. Did you ever see this advertisement before, when it was being sold, or don't you remember?

A. I don't recollect it. I knew Mr. Hammond very well, but never knew that he lived on that ground.

Q. Hammond lived in town?

A. Yes, sir; he went away from here in 1824 or 1825.

Q. Did you know he claimed this land?

A. Yes, sir; I knew it was claimed by him, and as such levied on and sold.

Q. Was the Cabbanne tract on the west perfectly known to everybody at that time?

A. I suppose it was. Cabbanne did not go there until 1819.

Q. The sale was in 1823?

A. Yes, sir.

Q. And the eastern boundary by Stokes and others?

The WITNESS: I knew Philipson very well, but I never knew he owned land there.

Mr. MORRISON: You knew he owned here (indicating), didn't you?

A. I don't know that he did.

By Mr. HILL: How long have you known Peter Lindell to have been in possession of this property here—of all this property from the Camp tract all the way around?

A. He claimed to own from Garrison avenue to the King's highway, north by Olive street and south by what is known as Laclede avenue, straight up. I don't know how many acres.

By the COURT:

Q. Olive street would run to that point, wouldn't it?

A. Yes, sir. I have heard the description of that road and that accords with my recollection. It runs around this lake, and here is the road on the north side of the lake (indicating).

Q. And also a road on the south side?

A. I don't recollect it.

Q. Would you have known this description to have meant this land in 1823?

A. Yes. I think I should have known it if I had read the advertisement.

Q. And you think the community would?

A. Yes, sir; I think so. That is about the descriptions
298 that the sheriffs gave in them days; that is about as near as they could come to it.

By Mr. JEWETT: Pretty vague?
A. Yes, sir.

Cross-examination by Mr. JEWETT, counsel for the plaintiffs:

Q. Where that land is described in the sheriff's deed as bounded south by Philipson and Gratiot, can you say Philipson and Gratiot had any boundary on the south side of this land if the sheriff undertook to convey this piece of land as they claim? He says it is bounded south by Gratiot and Philipson. How can you verify that boundary?

A. I don't know that Gratiot owned any south of it. I don't know who owned it.

Q. If Gratiot or Philipson owned any portion of this land the description would not be inserted, would it, in the deed? If the sheriff's deed bounded this land south by Gratiot and Philipson, and that is the south line of it, how is that description verified? That is south by Philipson, isn't it?

A. Where is Philipson? If Philipson owned any of that land it was south.

Mr. MORRISON: Let me read the description: "Two hundred and forty arpens, more or less, bounded on the south by Gratiot and Philipson." Put your finger on that and tell me where the boundary was.

A. I can't tell you where it was.

Q. And the only reason why you think you know the land is that you knew that Hammond owned it?

A. Yes, sir.

Q. And that is all?

A. I knew he owned that tract.

Q. You knew it was levied on and sold, but you do not pretend to say that this description covers the land?

A. I do not know whether it covers it or not; all I say is I believe at that time people would have known what the land was that was up for sale.

Q. If it had been bounded wrong, if they knew anything about the boundaries, wouldn't the sheriff's description have been false in every particular?

A. That is a legal question. If Stokes owned that land, it would not be a correct boundary.

Q. If it said "bounded east by Stokes and others," and Stokes owned no portion of this strip here, that would have been false, wouldn't it, except as to others?

A. I suppose it would not have been correct boundary.

Q. If it said it included the Hammond spring, and the Hammond spring is on the Conway tract, that would have been false, wouldn't it?

A. I suppose it would.

Q. Now, if Stokes owned that tract up to there (indicating), but somebody else owned back, and if it was bounded east by Stokes and others, the description would answer to this piece of land, wouldn't it?

A. I suppose so.

Q. And if Gratiot owned up to there (indicating), and Philipson owned there, and this land is bounded by the sheriff south by Gratiot and Philipson, then the boundary would answer for the south boundary of this piece of land, wouldn't it?—the Stokes land?

A. I suppose so.

Q. Then according to that all the boundaries and all the calls, except that it is bounded west by Cabbanne, are false?

A. Yes, sir.

Q. Now, the boundaries, all except the western one, are false, unless Gratiot and Philipson owned that and Stokes owned this?

A. Well, that is not a very good description by the sheriff. It was the best he could give. I suppose everybody would know that it was Hammond's land that they were trying to sell.

Q. If you had been buying there you would have supposed that you were buying the Hammond Spring tract?

A. Of course I would.

Mr. HILL: And the balance of it.

Mr. JEWETT: You were not if you were buying only this piece?

The WITNESS: I suppose not.

299 Mr. JEWETT:

Q. You would have been deceived if you thought you were buying the Hammond spring; can you locate this land according to the boundaries of the sheriff?

The WITNESS: I should have known that he was trying to sell Hammond's land, and I supposed he always owned the spring.

Mr. JEWETT: And you suppose that would have covered the Hammond spring?

A. Lindell owned it afterwards; you would have paid more for it on that account if it had included the Hammond spring.

By Mr. JEWETT:

Q. Was this piece of property, the 240 acres, at that time fairly and justly worth according to the market price in 1823—in the fall, what was this 240 acres of land fairly worth?

A. I wouldn't be able to tell you; the land was very low about that time.

Q. There was no particular depression then, was there?

A. Yes; everything was broken up down to the lowest pitch.

Q. Stay law in force?

A. Stay law—State loan office to get rid of the debt.

Q. They gave you worthless paper money?

A. Land was very unsaleable at that time.

Q. Can you say what a fair price of that it would be?

A. I don't know; I wouldn't pretend to say now what it was worth then.

Q. Was it worth $5 an acre or $10?

A. Yes; I suppose twenty.

Q. Wasn't it worth fifty?

A. I don't believe it was.

Q. Wouldn't it have brought $40 an acre?

A. No, sir; I don't think it would have brought $10 an acre—not more than that.

Q. Now, how much difference was there in prices between land in 1818 and 1824?

A. I think probably it would sell better in 1819 than 1823. Everything went down to nothing—there was no sale for anything, property hardly—from 1821 to 1823.

By Mr. HILL:

Q. How long has Mr. Lindell been in possession of this land? Do you know?

A. Mr. Lindell claimed the possession from Stoddard's addition, from Garrison avenue to King's highway, taking that whole tract there up to the Olive-street road and south by Laclede avenue as far as it went. I don't know where the land went beyond that.

By Mr. JEWETT:

Q. Do you know anything about what sort of possession he had?

A. Six hundred or a thousand acres.

Q. What kind of a possession did he have?

—. He claimed it as his land.

Q. Was there any fence on any portion of this large tract which you say he claimed? How much of it was fenced?

A. I don't think there was any fenced. There might have been little patches of fence.

Mr. HILL: You mean in 1826 or 1827?

The WITNESS: In 1822 or 1823.

By Mr. JEWETT:

Q. Was any of it fenced before Mr. Fenn went on there in 1845?

A. I don't recollect of any being there.

Q. Do you remember any fence on this portion of the lot? How early do you remember any fence on any portion of this tract of land?

—. ——.

Q. I wish to know, if you know, whether there was any fence on this portion of the tract fenced by Lindell; if you know anything about how early it was fenced by him.

A. It was fenced in west of the spring, but I don't recollect what time.

Q. How early?

A. I should think in 1830.

Q. Wasn't it as late as 1845?

A. I couldn't say but it was.

Q. Do you remember when Fenn had his big cow pasture there?

A. I know somebody did.

300 Q. Have you any recollection of any fence here before the big cow pasture, extending west?

A. No; I don't remember it. I don't know of a fence there till

1840. There might have been a little fence at the spring, where there was an orchard; probably it was fenced in.

Q. You can't say whether in 1830 or 1840?

A. No; I cannot.

Q. Do you recollect whether it was before Fenn went there and had a cow pasture there?

A. I rather think the fence was before that, but I am not certain.

By the COURT:

Q. West of the spring?

A. Yes, sir; where that orchard was.

By Mr. JEWETT:

Q. How far is that, from the house to that—from there to there (indicating)? Did the orchard cover more than four arpens south of the house?

A. I don't know; I don't recollect much about that. I must say, gentlemen, that I knew but very little about it. I took but very little notice of it at any time, except the Hammond spring.

Also the testimony of L. H. BAKER, same record, and on the Coleman Record, 464.

Testimony of Levin H. Baker.

By Mr. HILL:

Q. What is your age?

A. I was 53 years old last September.

Q. How long have you lived in St. Louis?

—. I have been living in St. Louis since April, 1831.

Q. What degree of consanguinity had you with the late Peter Lindell, deceased?

A. He was my uncle, sir.

Q. When did he die?

A. On the 26th October, I believe, 1861.

Q. Did you know the farm called Lindell farm, a portion of which is in controversy in this suit; and, if so, how long have you known it?

A. I do; I do know the farm and have known it. I have been on it more or less ever since the spring of 1831.

Q. With whom did you live from 1831 until the time of your marriage?

A. With Peter Lindell, sir.

Q. In what capacity did you act with reference to the affairs of Peter Lindell, by his authority?

A. Since I was old enough I was his agent and transacted pretty much all his business in connection with his rents and lands. I collected his rents and done pretty much all the business.

301 Q. As to taxes and insurance?

A. Yes, sir; and everything appertaining to the business of the estate.

Q. How old were you in 1831?

A. I was 9 years old, sir.

Q. When did you first remember the existence of the possession of Peter Lindell of the property between what is now known as Garrison avenue and the King's highway, east and west of the Olive-street road on the north and the new Laclede avenue on the south?

A. I have known his possession of the property, including the Camp tract, commencing at Garrison avenue, and then also the Hunot tract and a portion of the Conway tract since 1831, and a portion of the farm he didn't acquire until about 1835—that is, the Boise, one-half of the Boise three arpens; one part he purchased and the other was——

Q. One part of Boise was from the Laroche tract?

A. Yes, sir.

Q. And the other two arpens of the Boise tract proper. State to the court your memory of the first fences.

A. About when I first came to St. Louis, as near as I can recollect, the fences about along where Vandeventer avenue is—the fence was built there along the east and extended along by the side of the Boise tract and west as far as the old Cabanne pond.

Q. South of Vandeventer avenue?

A. The fences, as near as I can recollect, extended east of what corresponds with Vandeventer avenue now as laid out; the eastern fence in 1831 extended about there.

Q. It run north and south somewhere about the present line of Vandeventer avenue?

A. Yes.

Mr. JEWETT: The fence did?

302 The WITNESS: Yes, sir; a little further west than Vandeventer avenue.

Mr. HILL: Where was the fence that run west of Vandeventer avenue?

A. The fence ran up to a tract there; that is called the McPherson avenue.

Q. You speak of the first fence?

A. Yes, sir; that run north as far as McPherson avenue and runs south to Laclede avenue.

Q. Tell the reporter what map you refer to.

A. It is this map of Peter Lindell's, according to the second revision.

Q. Now, give the court the exact ambit, as near as you can—the ambit of the fence on all the sides—north, east, south, and west.

A. The fences were intersected at about Laclede avenue and run westward to very near what is called Cabanne's lake or pond; it run about along the line of Laclede avenue until it reached to vicinity of Cabanne lake, and then it run across in this direction (indicating).

Q. Then northwardly?

A. Yes, sir; and intersected it up here.

Q. Intersected the MacPherson avenue?

A. Intersected about MacPherson avenue.

Q. At what point?

A. Somewhere in this course of Taylor avenue and west of Taylor avenue.

Q. How far west was it of Taylor avenue?

A. It may have been about half way between Taylor avenue and Lake avenue.

Q. Reached the vicinity of McPherson avenue and about half way between Taylor and Lake avenue?

A. Yes, sir; and then it ran down this line of McPherson avenue until it intersected again the corner down here near Vandeventer avenue.

303 Q. Did it run along the line of McPherson avenue?

A. It may have been a little one way or the other. The old fence of Desela and Bouis' possession I recollect didn't run in a straight line with the survey.

Q. Was the Maire or Hammond spring within the first enclosure?

A. Yes, sir. There is where the old house was where Peter Lindell kept his servants and slaves.

Q. Whose slaves?

A. Peter Lindell's.

Q. How far was the western fence in 1831 from the Maire or Hammond spring?

A. It must have been at least 2,000 feet. This land there was all in cultivation except north of the spring—east for a short distance; then there was the prairie in cultivation.

Q. How many acres did that enclose in 1831, when you first saw it?

A. Well, I suppose there must have been at least 500 acres.

Q. Were any extensions made to that enclosure that you know of; and, if so, when and how were the extensions built, and where?

A. Extensions were made from year to year until 1840, when the entire tract was enclosed.

By the COURT: What do you mean by the entire tract?

A. That is, including the eastern portion from this point (indicating) to Garrison avenue and the portion down here.

Q. You mean westward to the King's highway?

A. Yes, sir.

Q. And on the north to the Olive-street road?

A. North to the Olive-street road.

The COURT: What date do you give for that inclosure?

304 A. About 1840; from 1831 to 1840. The enclosure was extended from time to time, and it was finally inclosed by a post-and-rail fence; part of it plank, but most of it rail-and-post fence.

Q. Let me ask you in regard to the extent of the enclosures.

They were finally made in 1840 on the tracts of land that were embraced within these inclosures of Peter Lindell?

A. The tracts of land embraced in these enclosures are the tracts.

Q. First, as to the Hunot tract?

A. Well, I was going to explain; up to where Cabanne had in possession, the King's highway, the tract that Cabanne had in possession, and the Hunot tract, about which there was a suit about that time.

Q. Cabanne's claim run east to King's highway how far?

Mr. JEWETT: We object to the question.

Mr. HILL: I wish to understand where the enclosure was made in 1840.

A. I say it was a strip of land, probably four or five hundred feet wide, east of King's highway, which was claimed by Cabanne. It wasn't inclosed by this fence until after the suit was decided.

Q. What date?

A. I don't know exactly the time; the suit was decided, October, 1848, of Lindell against Cabanne. The fence went right up against Cabanne. Cabanne had that part inclosed.

The COURT: It didn't go in 1840 entirely to the King's highway?

A. No, sir; it went up to his inclosure.

Q. At the termination of the suit of Cabanne against Lindell, then, your fence extended westward to the King's highway?

A. Yes, sir.

Q. And that was about 1848?

A. Yes, sir; but that was enclosed, however. The Lindell's fence went up to Cabanne's enclosure in 1846.

305 Q. Do you know who Cabanne claimed under?

(Mr. JEWETT: We object to all this matter.)

Q. Do you know who Cabanne claimed under for that 500 feet?

Mr. JEWETT: We object to the question as incompetent.

Mr. HILL: I wish to save the expense of bringing in the Cabanne record, which contains about 400 pages.

Q. In 1840 are you able to point out on the map how far the fence extended—that is to say, how much of the Hunot tract did it cover?

A. That covered the entire Hunot tract, except what Cabanne had enclosed there; I suppose about 400 feet east of King's highway.

Q. How far north and south?

A. It run to Olive street as far as the Gratiot property.

Q. Well, I have not heard yet how far it extended north and south, this inclosure of Cabanne's.

A. Say in distance probably half a mile, very nearly.

Q. That would be the whole of the forty arpens?

A. It would be forty arpens in length.

Q. That whole forty arpens was closed up in 1840?

A. Yes, sir.

The COURT: Your western fence abutted onto Cabanne at that time. How far east was it of King's highway in 1840, previous to your getting possession of that which was in the possession of Cabanne?

A. I said about 400 feet; I cannot say definitely; probably the survey might make it less than that. That was inclosed, I can recollect from memory.

Q. How far did that fence extend north and south?

A. It extended the whole length of the Hunot claim north and south.

306 Q. Now, as to the balance of the Hunot claim, was that fenced in 1840?

A. It was fenced in 1840 by a permanent fence; first, as I stated before, in 1831; I described the fence then; from time to time then from that the enclosures had been extended, and in 1840 Joseph C. Brown made an accurate survey of the entrie tract of land there and Peter Lindell put up a permanent fence all around the property.

Q. According to that survey?

A. Yes, sir; with the exception of the Cabanne fence.

Q. Then that enclosed the entire tract except what Cabanne had in possession?

A. Yes, sir.

Q. Do you remember when, if you ever, obtained possession of the part east of the King's highway that was close to Cabanne?

A. I cannot say the date; it was immediately after the suit was decided that he took possession of it.

Q. The suit was decided in the supreme court of the State?

A. Yes, sir.

Q. Now, how has that fence been since that day—since 1840 and 1848?

A. Up to the time of the division of the estate it was all out—no outside fence, but since the division of the estate it has been fenced up according to the subdivision of the estate.

Q. Are you speaking particularly of the western boundary or the King's highway?

A. The whole of it enclosed the western boundary and also the eastern boundary.

Q. You spoke of a division. Do you mean this division between the heirs of Peter Lindell, deceased?

A. Yes, sir.

Q. Into equal parts of one-tenth for each heir?

A. Yes, sir.

Q. That division was completed in 1863?

307 A. Yes, sir; I believe that *it* is about the date.

Q. And since the division have you any knowledge whether the heirs have possessed their respective parts in that tract?

A. They have, sir.

Q. Up to this day?

A. They have, sir; by their tenants and personal possession.

Q. Have you had personal knowledge of that yourself?

A. Yes, sir; I have.

Q. You spoke of the tracts of land that were included in this fence first; you spoke of a Hunot; now, was there any other tract of land?

A. The Conway.

Q. What part of the Conway?

A. The corner of the Conway, the southern.

Q. Were there any field lots that you possessed?

A. Yes, sir; there was some field lots in the south of Desela.

Q. State what field lots you possessed.

Mr. JEWETT: We object to that. Let him put his title in if he has any. He can state where his fence was and then the Government surveys will determine.

The COURT: The question now is a question of fact where the fence was.

Mr. HILL: I ask him as to the enclosure on the north; then after leaving the Hunot tract where did this enclosure extend?

A. It came around the enclosure, came around Taylor avenue at Olive street, and then came around to the end of this McPherson tract.

The COURT: In other words, it turned and followed Taylor avenue down some distance?

308 A. Yes; it turned and came down this way (indicating).

Q. State where it came?

A. After it left Olive street it ran south on Taylor avenue until it struck to Boise tract, the tract owned by Desela, and then it went west again or went off the tract and then it went east and then it came——

Q. East where?

A. East across.

Q. At what point did it start to go east?

A. It came to the south of where McPherson avenue is now and then it followed to the line of McPherson avenue down to Boyle avenue, which was the center of the Boise tract, and then it went out within one arpent of the Olive-street road again and followed along the Olive-street road.

Mr. HILL: I cannot locate it, because the court will not allow me to ask him whether it is on the Boise or Robert tract.

The COURT: There is not the slightest difficulty.

Mr. HILL: If you will follow my questions you can locate it.

The COURT: I understanding him, commencing at the northwest corner of the Hunot survey, if you follow the line of Taylor avenue until you get to the line of the middle of this Laroche survey and go westward along that line until you get to the eastern line of that first mark—this yellow line——

Mr. HILL: He says they came around on Olive street.

The COURT: Until you reach this point and then you turned and went down Taylor avenue south until you came to this point (indicating).

The WITNESS: It ran on the line of this section; this was in possession of Peter Lindell.

309 The COURT: In other words, you followed this ink line or the fence did?

Mr. HILL: No; he went all the way down.

The COURT: He followed this survey——

The WITNESS: To the Hunot claim, the southern or rather the eastern boundary of this point of the Hunot claim, until you came to the central line of the Laroche tract, and then you ran west along the Laroche tract until you came to the end of the Laroche tract, and then you ran south three arpens until you got on this line here between the Bizette and the Boise, and then you ran down until you came to here.

Q. Is that on the north or south side of McPherson avenue?

A. On the north side of McPherson avenue or about the center of what is called McPherson avenue now.

Q. And then where?

A. Then came down to what is called Boyle avenue and ran 20 arpens east.

The COURT: The middle line of the Boise survey?

The WITNESS: Then it went across this three arpens again north until it came to the middle line of Laroche, and then it ran right down to where it intersected the camp tract.

The COURT: Down beyond Grand avenue?

A. Then it followed the line of the camp tract until it ran up a little east of Garrison avenue. There is another map here that shows the other portion.

Mr. HILL: Well, then, all this land embraced within the ink line, including these angles that are left out, leaves the fence of Peter Lindell down to Grand avenue which is represented here?

310 A. That was in 1840.

Q. Now, give the southern fences—state how they run.

A. The southern fence, it turned on the eastern fence of the Camp claim, and then it ran along the southern line of the Camp tract until it came to this point on Vandeventer avenue.

Q. And thence where?

A. Then it ran to Vandeventer avenue along the Camp tract, along the south line of the Camp tract; than it ran south on Vandeventer avenue until it struck Bates avenue, and ran along Bates avenue until it came to the King's highway at the jog at that point and ran a little north, and then it ran along King's highway until it touched King's highway at this point, right in front of Cabanne's old house.

The COURT: You speak of touching.

A. Touched Cabanne's fence.

The COURT: It turns on the Olive-street road, northeast corner of Hunot survey, and runs along the eastern line of the Hunot survey until it comes to the middle of the Laroche survey, then turns westward and runs along the line of Laroche.

Mr. HILL: Do you recollect any old road out there while you were a boy?

A. I do.

Q. Could you tell whereabouts that old road ran on that map?

A. The old road spoken of by the witnesses came along here (indicating). There was a gate near there (indicating) as early as I can recollect. There was a gate on the eastern fence of Peter Lindell's farm, near Vandeventer avenue, where there was an old road, and that old road ran along somewheres in a direction westward until it struck about or very near the Hammond spring, and then, I recollect, ran both sides of that and went over towards the
311 Cabanne's place, and there was another gate just above. That is as near as it can be marked out. The marks of the old road are there distinctly to-day and almost as distinct as they were 20 years ago.

Q. Look at this map and locate the old road (indicating). This is the road, here at the corner lots, and the cultivations of Provenchre, Alexis Marie, and Boise and Laroche. Now, give the court your views, as near as you can remember, of the distance of that road north and south of the spring; or, if it went on both sides, give one side.

A. It went on both sides of the lake. The lake was about in here (indicating); it went that way a little south of the lake and the spring; came up here then it turned around. I don't think that tracing there is correct. I think it turned around much more rapid from the old house there than this does here.

Q. What do you mean by that—"more south"?

A. More south; more sharply than is indicated on this map. There is a depression here this house is on. There is a hill back of the house or a ridge, and there it turns south more rapid than it does on the map.

Q. How far was the house from the spring and in what direction?

A. The house, probably, might have been 250 feet from the spring; right on top of the hill westward—an old log house.

Q. How far was the old road from the spring?

A. A very short distance; probably about 50 feet north of the spring. The northern branch of it circled down much nearer the house. I think it run about here with reference to the house (indicating).

312 Q. According to that map it is three or four arpens north of the spring, is it not?

A. I should judge it was north 2 arpens. I suppose, probably, nearly two arpens north of the spring, I reckon.

Q. Which side of the old Boise house did the road run?

A. It run south of the old Boise house some distance.

Q. How far off?

A. My recollection is the old Boise house was about the center of the two arpens—center of the three arpens.

Q. What do you mean by the center of the arpens?

A. Of the Laroche and Boise.

Q. You mean that survey?

A. Yes, sir.

By Mr. JEWETT: As surveyed by whom?

A. I don't know whom.

By Mr. MORRISON: How far north of the spring was this Boise house?

The WITNESS: North of the road. I suppose it was about an arpen and a half north of the old road.

Q. That you travelled?

A. Yes, sir.

Q. Do you remember of seeing what was called the old lines of cultivation on any portion of that property when you were young?

A. I have seen the marks of cultivation there very plain when I first came here. I have travelled over that country with Joseph C. Brown a great deal, and I was with him when he made the surveys there in 1840.

Q. The surveys of the common field?

A. No, sir; that tract for Mr. Lindell.

Q. What tract?

A. The whole of this tract that I have described—the farm, including the Camp and Hunot and Conway and Boise tracts and the Laroche.

313 Q. The Hunot?

A. Yes, sir; the lines of the furrows ran almost directly east and west.

Q. Did you notice how far these lines or furrows—the dividing lines, you may call them, between the different cultivated lots—how far south of the Boise lots those lines or furrows extended?

A. I cannot say exactly. I think that they extended to what is known or was known as the woods, about where Vandeventer avenue is now, which was then in trees, woods, a little west of them, and after you got past that it was in an open field until you got to near Laclede avenue, which was then woods again, and the line of the furrows could be distinctly traced, more or less, upon the property from Laclede avenue over to the Boise tract.

Q. Where is Laclede avenue—how near to the outlines of this farm?

A. Within about one thousand feet of the south line of this farm.

Q. North of the south line of that farm?

A. South of Laclede avenue.

Q. The land was in woods—covered with trees?

A. Yes, sir; some portions of it was and some portions not in the Camp tract. In the end of the Camp tract it was not, because the creek runs there, the ravine and the Hammond spring; the water run from the corner of that, and when you got westward it was trees.

Q. Do you know the points of the compass on that property; do you know how to show the court the lines of those furrows on the map?

A. Yes, sir; I know the points of the compass.

Q. Here is Provenchere, Marie, and Corneau?

A. I think the lines, as far as I can recollect now, ran almost parallel with this Camp line here, in this direction.

314 Q. From here they were not parallel with the Grand Prairie common fields?

A. I don't know; I cannot say definitely about that, because I could not see any cultivation of the common fields.

Q. But as far as the Lindell tract extended—as far north as the Boise tract?

A. As far north as the Olive-street road I know about the directions.

Q. Suppose you take a pencil and lay it down on this map as near as you can in the direction of these fields.

A. Well, the cultivation, as near as I can recollect now, ran almost parallel with what is known as Lindell avenue now, which was the parallel line of the northern line of the Camp tract.

Q. Now, suppose you swing those two tracks of Provenchere and Mairie down to that line of cultivation, where would that bring their lines? These are laid down parallel with the northern line of the Camp tract and the Provench-re claim and the Maire claim. How does that correspond with your recollection?

A. That is about the line of the marks of cultivation as I have observed them.

Q. Where was the Boise house as on this map?

A. The Boise house was about here, sir, somewhere (indicating).

Q. Within that line of the 16th section?

A. Yes, sir.

Q. Within the line of the Boise tract as laid down on that map?

A. Yes, sir.

Mr. JEWETT: Do you mean to say the Boise house was south of the Hammond spring?

A. No, sir.

Mr. JEWETT: You make it a good deal south; if you give that direction you make it south of the Hammond spring.

A. As near as I can recollect, there is a ridge.

315 By Mr. HILL: You saw the Corneau springs there; can you point them out?

The COURT: This is south of the Hammond spring as surveyed by the United States?

A. I cannot recollect about the survey—somewhere in this neighborhood.

Q. You saw the Corneau spring there?

A. Yes, sir; it was in the vicinity of the Corneau spring.

Q. What direction from that?

A. Little northwest from the Corneau spring.

Q. Can you tell about how far off that was from the Corneau spring?

A. No, sir; I cannot tell. It is a depression here and the ground rises as you go westward and north. Here was rising ground (indicating).

Q. Is there not another depression out here where that branch runs?

A. Yes, sir; after we passed there there was another depression over here.

Q. The same depression that you find back of the McPherson's place?

A. Yes, sir; the depression extends here and goes this way, and then another depression here after you passed over on the McPherson avenue; it is higher than here.

Q. For how many arpens north and south did you see these ancient marks of cultivation?

A. I cannot tell exactly the distance, but it must have been upwards of 1,500 feet, I think, sir.

Q. Do you know at whose instance the act of Congress of June 30th, 1864, was passed?

By Mr. JEWETT: What do you ask that for?

Mr. HILL: To show that he conceived himself to be the owner.

316 The COURT: I cannot see the significence of this.

Q. How much of the Laroche tract did Lindell's fence include?

Mr. JEWETT: We object.

The COURT: That is a question that I can understand specially by the placing of these lines. I understand exactly from this plat.

Mr. HILL: If Mr. Jewett objects I shall have to put in the deeds.

Mr. JEWETT: No; I have located this Laroche on that map as located according to the United States survey.

The COURT: He has so stated that from the point in the middle of the Laroche east and west, that of the Laroche tract from that point to Grand avenue, was inclosed.

The WITNESS: Running east.

The COURT: Running east; and he has already stated that explicitly; in other words, the line from the point in the middle of the Laroche arpen.

Mr. HILL: That is what I wish to get at.

The COURT: 20 arpens west of the eastern line of the Laroche, until you get to the Grand-avenue fence, was inclosed—the southern half of the Laroche.

The WITNESS: Of the Camp.

The COURT: Down to Garrison avenue.

Mr. JEWETT: He has been all over that.

The COURT: In other words, from the inclosure there was excluded the western half of the Laroche southern arpen and what was included in the Bouis survey, and in the Bachinet included down to the middle line of McPherson avenue.

317 Mr. COZENS: I can explain that apparent discrepancy on that map. It is in this United States survey; they didn't make an offset until it came to the south line of the Laroche tract, and Desela, who owned one-half of the Laroche tract in width and 20 in depth, east and west, had taken possession of his 20 arpens and extended further west than the northern half; that is the trouble of that map.

Mr. HILL: To cover that defect I introduce this evidence and this map of survey by the United States surveyor general.

LEVIN H. BAKER, recalled for the plaintiff-, testified as follows:

Direct examination.

By Mr. JEWETT:

Q. You say you were nine years old in 1831?
A. When I came here.
Q. You had lived in St. Louis before that time?
A. No, sir.
Q. At that time did you go immediately into Peter Lindell's family, or did you live at your father's?
A. No, sir; my father was in Maryland; I came here for the purpose of living with my uncle Peter. I staid with my uncle Jesse a week or two after I arrived here.
Q. And then went to live with your uncle Peter?
A. Yes, sir.
Q. Now, at what age did you say you began to have charge of the out-door business of looking after lands, and so forth, of your uncle Peter's property?
A. I commenced making collections for him within a year after I arrived here.
Q. Money collections?
A. Yes, sir.
Q. Rents, and so forth?
A. Yes, sir; and after I was — age I had the management of the business entirely.
318 Q. You had no charge of the property, then, or oversight, until about the time you became of age, did you?
A. No, sir; no further than I looked after it and gave attention to it.
Q. Now, are you distinct in your recollection that as a boy of nine or ten in 1831 you can locate all the fences on that land at that time?
A. Very nearly, sir; I don't think there is much doubt about it. I was there with my uncle frequently, over the place every week, and always went with him in a buggy, or most always.
Q. You made no stops out there, did you?
A. Yes.
Q. Had he any tenants on any portion of this property at that time?
A. Yes, sir; he had a family of colored persons living in the Hammond house. We always took our dinner out there.
Q. In 1831 do you say that he had a family in that Hammond house?
A. Yes, sir.
Q. Had he any pretence of title to the Conway lot in 1831?
A. In what way—he had possession of it, the latter part of it.
Q. Had he any title or color of title by deed that you are aware of in 1831?

A. I can't say that now; I don't know.

Q. You have lately examined all the papers relating to that title, haven't you?

A. I have; but I don't recollect now the dates. I haven't for some time.

Q. You won't say, then, that he had any deed in 1831 that purported to convey to him an interest in the Conway claim, will you, from your recollection?

A. I don't know, sir. I know that he had possession in 1831.

Q. You know that he had a colored man that lived in the house by the Hammond spring?

A. Yes, sir.

319 Q. And that was as early as 1831, you are positive?

A. I am.

Q. Do you say that in 1831 you are positive also that he had fenced a portion of what you would call the Hammond part of the Hunot survey?

A. Well, it is my impression it was, because it is some distance west of the Hammond Spring enclosure—the cultivation was.

Q. What distance west of the Hammond spring do you think he had inclosed in 1831?

A. As far east as about where Taylor avenue would be.

Q. About how far west would that be from the Hammond spring?

A. Probably about 500 feet.

Q. That would be more than half way across the Hammond part of the Hunot survey, wouldn't it?

A. No, sir; it would not; probably it might be half way.

Q. It would be about half way, wouldn't it?

A. It might be.

Q. There would be Taylor avenue—there (indicating on a plat)?

A. Yes, sir.

Q. Now, wouldn't that carry you west 1,500 feet of Taylor avenue?

A. No, sir.

Q. Then you think that he had fenced in about there (indicating)?

A. Yes; the fence extended out to this fence that I speak of here.

Q. How soon after 1831 did he extend the fence here?

A. In the neighborhood of from 1831 to 1836. I stated the fence was extended from time to time out here.

Q. When he had a fence out there did he claim also at that time this portion of it here (indicating)?

A. I understand that he did.

320 Q. That he claimed that in 1831?

A. That he claimed that and this here.

Q. In 1831—that he claimed the whole entire interest in 1831?

A. Yes, sir.

Q. Did he claim this portion as fenced here?

A. Yes; he was cultivating that portion of it.

Q. At that time you had no knowledge, I suppose, whether the Hammond spring was on the Conway or Hunot surveys?

A. No, sir.

Q. Had Mr. Lindell in 1831 any color of title to the Hammond portion of the Hunot survey?

A. Well, sir, I can't state; only by the papers, sir.

Q. What is your recollection, according to the papers—any that you knew of?

A. He had the Stokes title and also the Hammond title.

Q. I am not asking about the Stokes title.

A. And he had the sheriff's deed of 1823.

Q. But he did not buy of the sheriff?

A. He bought afterwards.

Q. He bought of whom?

A. Relf and Chew; I think so.

Q. Do you say that deed of Relfe and Chew to him was as early as 1831?

A. Yes, sir.

Q. Are you not mistaken?

A. No, sir; I think not.

Q. Are you as certain of that as what you have testified to here before?

A. My impression is it was.

Q. And that is the best of your recollection?

A. Yes, sir.

Q. And if you are mistaken in that you are likely to be mistaken in the rest of the facts?

A. No, sir.

321 Q. Do you remember as a man, when you examined this deed, the date of them as well as when you examined the fences?

A. As far as the examinations are concerned, as a boy my recollection of the fences would be impressed more strongly upon my memory than other things.

Q. And you have not an impression of the time when he acquired the sheriff's deed, have you?

A. That is my impression; that it was not very far from the time it was sold; that he acquired both interests very near the same time.

Q. Acquired the Stokes interest in the south part and the Hammond in the north part at the same time?

A. Pretty near the same time.

Q. Don't you remember the deed- that you put in show that he did not acquire the Hammond interest until 1840?

A. I did not hear the deeds read.

Q. If the deed from Relf and Chew to Lindell is dated in 1840, that is the first title he had to it, isn't it?

A. I suppose so.

Q. Do you know of any other color of title that he had to it than is claimed under the sheriff's deed?

A. He had a deed from Hunot.

Q. Do you remember the date of that?
A. In 1836.
Q. If the Hunot deed was dated in 1836 and the Relf and Chew deed in 1840, he had no color of title in 1831, had he?
A. There is no such supposition, I don't think.
Q. As what?
A. I am sure the deed was a good deal earlier than that.
322 Q. What deed?
A. The Relf and Chew deed.
Q. Earlier than what?
A. Earlier than 1840.
Q. Just answer on my supposition. If the Relf and Chew deed was in 1840 and the Hunot deed in 1834, have you any knowledge that he had any color of title in 1831 to that property, any knowledge of any other color of title to the Hammond portion of the property—that Peter Lindell had?
A. No, sir; I don't know that he had, only from the deed by the sheriff.
Q. Then, if the sheriff's deed is in 1840 or the deed from Relfe and Chew is in 1840 and the Hunot release is in 1834, *then* he was occupying that land without any color of title, wasn't he, as far as you know?
A. If that is the fact, it would be so.

Mr. HILL: We have read the deed from Evans of 1828.

By Mr. JEWETT:

Q. If your recollection should be refreshed by the production of these deeds and it should appear that he got the Hunot release in 1834 and the Relfe and Chew deed in 1840, do you think you are correct in answering that he fenced in a very considerable portion of the land as early as 1831?
A. Yes, sir.
Q. Then, if so, he fenced it in without any title.
A. That may be all true. We had it all fenced in, nevertheless.

Also testimony of John F. Darby, Hammond *et al. vs.* Baker, pages 47 to 65, inclusive.

323 *Testimony of Jno. F. Darby.*

JOHN F. DARBY, of lawful age, being produced, was sworn, and testified as follows:

By Mr. HENDERSON:

Q. Mr. Darby, did you know the Philipsons who used to live out west of the city here?
A. Yes, sir; I knew the Phillipsons.
Q. Joseph and Simon?
A. Yes, sir.
Q. Do you know what time one of them died?

A. Simon was the one, I think, that died first. Old Joe lived a long time afterwards. He used to live down on Third street; he lived a long time afterwards. I think that was Joseph.

Q. Do you recollect whether they had any claims out in the Grand Prairie common field?

A. I understood so. I bought that whole Stokes place myself except 15 arpents off the east end of it. I owned it. I mean the Stokes place—the place that was settled by the Stokes, in the En Campe tract.

Q. Well, you owned that land?

A. Yes, sir; I owned that land ever since old Stokes improved it. I came there in the summer of 1820, when old Stokes had just improved it. We had been into town and going out there to Stokes'—it was a very warm day in June—Samuel C. Owens, who lived after at Independence, and a young man named Mill, who went to Alabama. Owens was killed in the Mexican war. We went out there. Stokes had just built his well, and there was very fine, cool water. Oh, yes; I had known Stokes well. Then after Stokes' death the place was sold to Alexander Macallister, who moved down on the place. Then we sold it about the year 1830 to George Collier, and George Collier lived there until his wife died, in 1835—1834 or '5. Then he sold the whole place, except 50 arpents, which he sold to another party, off the east end of it. I know that place well. I was very well acquainted with it out there.

Q. You were acquainted with this land out there in 1853, were you?

A. Yes, sir; I knew it right along ever since 1820.

Q. Do you know whether, in 1823, Phillipson made any claim to any land out there?

A. Up to 1823 I lived out on my father's plantation there, and we came into town one day; a friend of ours in the country was along, and we brought a lunch with us; we then drove out there to the Hammonds spring. After watering our horses there we ate our lunch. There was a house just above the spring that was said to be Hammond's; that is what they called it; that is what they called it. That is why they called it Hammond springs. I knew the place then, and I have known it pretty much ever since. I knew where John Bofield had his place there—that place where Mr. Cozens called Des Islet. John Bofield's widow married Des Islet, and the land that John Bofield had out came to Des Islet. He had sold it to McPherson—that is, Bofield sold to Macpherson before he died, and then Des Islet occupied it afterwards. I knew that place well.

Q. Did you know it when Des Islet occupied it?

A. Yes, sir; I knew it well. I knew it before that. I knew that John Bofield occupied it.

Q. When did you first know John Bofield to occupy it?

A. He occupied it about the year 1827 or '8.

Q. Was he living on it then?

A. Yes, sir—that is, he used to live in town, but generally Bofield

would go out there and plow and cultivate it. I don't know whether there was any house on it.

Q. It was the same land that Des Islets afterwards occupied?

A. Yes, sir.

Q. The same that Macpherson afterwards bought?

A. Yes, sir; that Macpherson afterwards bought.

Q. And the same that was occupied by Bofield?

A. Yes, sir. I had owned a piece of land over there in the Motard tract. I knew the lands all along there, all these different pieces of land, being interested myself—that is, way south—and this Chouteau tract came up to the Stokes tract that we bought right up to the line there.

Q. On your south?

A. On my south, and then afterwards he sold it; and there was an old Irishman by the name of Bob Rankin upon what we
324 called a potato patch. He had planted a great number of potatoes there without any fence around them—a sort of a kind of half-crazy man. I knew those lands up from about 1819 up to 1823—the lands around the Motard tract. In 1819 I was coming into town, and I stopped at this place near what they now call Rock springs. There was no house there then. There was no house from St. Louis till we got out to Cabanne's or out to the old Gratiot place. All was open prairie around, but we could see this place of Bofield's, and there was another one that was said to be, perhaps, Phillipson's, but I didn't know them; didn't see them on the place; didn't know about it.

Q. Where was the Philipson land or the claim that was set up?

A. I only saw a place *off* that was said to be Phillipson's place.

Q. Where was that place in reference to Hammond springs?

A. Well, it strikes me that it was a little to the east or south of that old road.

By Mr. JEWETT:

Q. That is, you mean the house?

A. No, sir; the field. I don't recollect whether there was any house there or not. I left here on the 15th day of September, 1823, to go back to North Carolina to school. I staid there and didn't come back until the year 1825, and then I came back in March or April, 1825.

By Mr. HENDERSON:

Q. Did you know Samuel Hammond?

A. Yes, sir.

Q. From what time did you know him?

A. Well, I used to live in the country, and he lived here, down on 3rd street. There was an old Frenchman lived down there called Bellesary, but went by the name generally of old Alexander, and he had a little tavern down there, and right back of that was where Hammond lived, on one side; and in coming in from the country we would stop there. There was also an old gentleman living in the country by the name of Gabriel Long. We came in

together and saw him; talked with Hammond. I was a lawyer, and I had a long talk with Hammond.

Q. Do you know about what time Hammond left here?

A. Yes, sir; he left here in 1824.

Q. Do you know why?

A. I don't know, only I believe there was a writ after him. I believe he went from here back to South Carolina by land—that is, he lived down in Jefferson county, and he had a place down there that he called Belle View. He went off across the Mississippi river, in the neighborhood of Herculaneum, and moved clear back to South Carolina, and then afterwards got to be secretary of state there. When Beverly Allen came in as U. S. district attorney, on John Quincy Adams being made President, he was after Hammond for debts due the United States. He used to tell me that he sent a writ to South Carolina for the marshal to arrest him, but South Carolina standing on her sovereign rights, they couldn't succeed in arresting him.

By Mr. HENDERSON:

Q. Where did Hammond live? Did he live out on this place—on the land out here, Mr. Darby?

A. He lived down here in this house on 3rd street. I never visited the family. I understood that the family used to go out in summer time into the country and stay there awhile at this spring. Many families in those days used to go out and live in the country during the summer.

Q. Do you know how far it was—the place they occupied—from the spring that was called the Hammond spring?

A. Well, it wasn't far. I recollect when I drove down to the spring. I drove down to the spring there the time Hammond was said to be living there. The house didn't appear to be further, not further than across the street there—right on the hill—a frame house up there.

Cross-examination.

By Mr. JEWETT:

Q. About where Mr. Stokes lived—that was near up about Garrison avenue—Mr. Stokes' house?

325 A. No, sir.

Q. He was that old Englishman?

A. Yes, sir; I wrote the history of him where old Stokes lived. The road that came down from his house was out about where the Wedge house is there now. I have noticed it frequently. There are two locust trees standing there, the last relic of old Stokes. The road was a little to the west, about where the Wedge house is now, and this Wedge house was right up about the middle. It was more than two of these squares would be from the gate up to the house. He had the place cultivated fine.

Q. Was it on the Stoddard tract or on the En Camp tract—which?

A. Oh, no; it was on the Eustache Peltier tract—right on the corner of Pine street and Elliott avenue.

Q. The Peltier tract is a part of the original location?

A. Stoddard location is a humbug, anyway.

Q. You don't know of Mr. Stokes living anywhere where his tract is?

A. He wasn't living anywhere else but there. They buried him about as far as from here to the planter's house—from there where he lived quiet and alone, like Sir John Moore.

Mr. HENDERSON:

Q. I read to you a description from a deed from the sheriff dated in 1823—the 4th day of November, 1823. He conveys in this deed a tract of land containing 240 arpents, more or less, bounded on the south by land of Gratiot and Phillipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes.

A. That place included the big spring known as the Hammond spring.

Q. This is a deed of this Samuel Hammond land. The judgment was in favor of Relfe & Chew. (Reads description in deed.) Do you know the tract of land that Hammond owned up there, afterwards conveyed to Stokes?

A. That was what I called the Hammond tract.

Q. Now, in 1823, supposing that Samuel Hammond owned no other land except that, would you have recognized and known that land by this description?

A. I would, sir, and the location of the ground I should have recognized as the Hammond tract. I have heard something, perhaps it was hearsay, though, about John Mullamphy being the agent for Relfe & Chew; that is my recollection about it. I knew John Mullanphy well and I knew John K. Walker very well. I think that Walker arrested Hammond for Chew, but he released Hammond upon the order of John Mullanphy, I think, as agent for Relfe and Chew; that is my recollection of it; that is all hearsay.

The COURT: The question was, could you recognize the tract of land by that description?

A. I think so.

By Mr. HENDERSON:

Q. Would you have been willing to bid on the land on that description?

A. I should; that — enough to identify the land.

By Mr. JEWETT:

Q. You would suppose from that description that it covered the Hammond spring?

A. I would, certainly.

Q. Phillipson occupied south of the Hunot survey—what land he had?

A. There was little cultivated there.

Q. You don't know anything about the Phillipson land on the side of the Hunot surveys?

A. Only from hearsay.

Q. How old were you in 1823?

A. I was 19 years old.

Q. Well, you had never examined the boundary at all of the Hunot surveys, I suppose, at that time?

A. I never examined the boundaries of any except my own land there.

Q. You never had any occasion to investigate where the Hunot survey was located, I suppose, at that time, had you?

A. No, sir.

Q. Had you any occasion to investigate where the Conway survey was located as early as 1823?

326 A. No, sir; I had nothing to do with land titles then.

Q. Had you any knowledge of where the Gratiot league tract was in 1823?

A. Yes, sir.

Q. Do you know what it bounded in 1823?

A. In 1823 I had been at Cabanne's and I knew it was the Gratiot tract. Then I knew that the Gratiot tract was subdivided. Pierre Chouteau lived on the Gratiot tract, just this side of the River des Peres. I had been to Cabanne's house as early as 1822—1821 or 1822. In 1823 I know I was there.

Q. What time in 1823 did you say that you left here?

A. 15th September, 1823.

Q. Well, you didn't know at that time, I suppose, where the En Campe tract was. did you?

A. No, sir.

Q. You didn't know who owned the En Campe tract at that time?

A. No, sir; I did not. I knew, though, about the Gratiot tract.

Q. You knew there was a Gratiot tract and that it was south of the Cabanne tract?

A. Yes, sir; from this reason: that my brother-in-law, Mr. Lewis, bought a part of the Gratiot tract and lived on it. He bought that, I think, in 1825.

Q. After you returned?

A. After I returned. I found him there when I came back.

Q. At his home? Where?

A. He lived on the River des Peres, on that Gratiot tract.

Q. Then you had a general knowledge that the Gratiot tract was down there by the River des Peres, where your relation lived?

A. Well, I had knowledge more from the Cabannes and the Chouteaus and then where the other part was—this part that was sold by Bofield, I think, to General Gratiot, who was then in the Interior Department at Washington, and he had been trying to sell it some time.

Q. You were not here from Sept., 1823, until 1825?

A. Not until about the last of March, 1825.

Q. At that time you don't know where the Heber tract was, did you—the one that Cabanne afterwards settled on?

A. I understood Cabanne had settled on the Gratiot tract.

Q. Then the Heber passed into the Gratiot tracts?

A. I brought a suit for the widow up here.

Q. That is, another one?

A. I don't know anything about that. Then I knew where the Cabanne tract was—that it was out there, lying near where our tract was, or not far away.

Q. Did you know that there was any such thing as Hunot New Madrid location survey?

A. No, sir. I knew this: that there was a good deal of dealing in New Madrid claims.

Q. But you didn't know anything about the Hunot New Madrid location about that time?

A. No, sir.

Q. You didn't know anything about the Conway New Madrid location about that time, did you?

A. No, sir. I knew that old Stokes was on a New Madrid survey.

By Mr. HENDERSON:

Q. You became acquainted in 1823, and since that time you were acquainted with this Hammond tract?

A. Well, I got acquainted, more or less, from personal interest, and engaged in fighting a great number of lawsuits for a number of years. I used to be either on the one side or the other. Gamble & Bates would be against me, then Geyer & Beverly Allen would be, and so on. I was engaged in nearly all these suits around about and got a general knowledge, and since that time I have come to know that that was the Hammond tract.

Q. Now, taking your previous knowledge of the Hammond tract, and knowing all the lands around it as in 1823, you would have understood where it was?

A. As I said before, I should have identified it by the spring and the other location- around.

Q. I ask you upon the knowledge you had in 1823.

A. No, no.

By Mr. JEWETT:

Q. Well, you would suppose from the spring that it covered the land around the spring?

A. Yes, sir, of course; that is the place where we would stop and get a drink of water.

327 Q. And if an advertisement said that the land took in the Hammond spring you would, of course, suppose it was the land around the Hammond spring?

A. Yes, sir.

Q. You had no idea how far out Hammond's land was or whether he had any land out there at that time?

A. No more than I had about the Cabanne and Gratiot tracts.

Q. Did you ever hear that Hammond ever did anything more than just live out there on that spring?
A. No, sir; that is all I heard.
Q. You didn't know he claimed any part of the Hunot claim?
A. I don't know anything about the origin of his claim or any other claim.

At this point the court adjourned until 10.30 o'clock to-morrow morning.

Also deposition of Richard Dowling, Hammond *vs.* Gordon:

Deposition of Richard Dowling.

RICHARD DOWLING, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Direct examination.

By Mr. LEWIS:

Q. Please state your name, age, and residence, Mr. Dowling.
A. Richard Dowling is my name; I am eighty-two years in May.
Q. You reside where?
A. 313 Marion street.
Q. In this city?
A. Yes, sir.
Q. How long have you lived here in St. Louis, Mr. Dowling?
A. Going on seventy-one years.
Q. Were you born here?
A. No, sir.
Q. Do you recollect what year you came here in?
A. 1817.
Q. Did you know Samuel Hammond?
A. I did.
Q. Did you know him when he owned a house on what is called the Hammond tract, near the Marie or Hammond spring?

Objected to as leading.

A. Yes, sir.
Q. Did you know the Hammond house?
A. Yes, sir; I did, sir.
Q. Do you know whether the spring was known as the Hammond spring?

Objected to as leading.

A. Yes, sir.
Q. Do you know whether it was known in the community by the name of Hammond spring?

Objected to as leading.

328 A. It was known by every person down in that country there as the Hammond spring, but the oldest French there

used to call it the Maire spring; but for the last sixty years I suppose it was always known by the Hammond spring.

Q. Well, after Hammond built his house by what was it known?

Objected to as leading and suggestive.

Q. After Hammond built his house what was it known as?

Objected to as leading; as suggestive. We say Hammond never built a house there, and the witness has not so testified.

A. Well, sir, when I first knew the place the house was standing there.

Q. Do you know whether it was owned by Hammond?

A. I don't know, only it was called the Hammond springs; was called the Hammond place.

Q. The house was there when you first knew the place, was it?

A. Yes, sir.

Q. Did you know Stokes?

A. Yes, sir.

Q. I mean William Stokes?

A. William Stokes; I knew him.

Q. Did you know Joseph Philipson?

A. Yes, sir.

Q. Did you know Henry Gratiot?

A. Yes, sir; I knew him. I knew all the Gratiots except the old man, Charles Gratiot, Sr.; I never knew him.

Q. Did you know where the Gratiot land lay out there?

A. Yes, sir.

Q. Did you know where the Philipson tract lay?

A. Yes, sir; the Philipson tract was what was called the Rock springs.

Q. Was the Philipson tract generally known as Rock springs?

Objected to as leading.

329 A. It was known there as Rock springs.

Q. Was it known by any other name?

A. Yes, sir; it was some years ago. There was an old fellow by the name of Lyons lived there. They called it the Lyons place. I knew his son, but I didn't know him. I never knew him when he lived there. He was an old negro.

Q. He was an old negro or mullatto, was he?

A. Yes, sir.

Q. The spring took its name from him, did it.

A. Used to call it the Lyons spring; after that the Rocks springs.

Q. Do you remember anything of a sale made by the sheriff in September, 1823, of this Hammond tract?

A. No, sir.

Q. I will read the description copied into the deed, Mr. Dowling: "A tract of land containing two hundred and forty arpens, more or less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, including the big springs known by

the name of Hammond spring." Did you know that tract of land out there?

A. Yes, sir.

Q. You did?

A. Yes, sir; the Hammond tract.

Q. I believe you said you knew the parties named here, Stokes, Cabanne, Gratiot, and Philipson?

A. Yes, sir; I knew them all.

Q. Did you know the tract of land known at that time by the name of the Hammond tract in 1823?

A. I stayed there in that house in 1824.

Q. You knew that tract of land either in 1820 or 1821, didn't you?

A. Yes, sir.

Objected to as leading.

WITNESS: I think I knew it in 1820 or 1821. I was out there in that country there before that, in 1819. I think it was 1820
330 or 1821 when I first knew the place.

Q. Now, you think it was 1820 or 1821 when you first knew the place?

A. I was out there before that, but I never noticed it. I don't think until about 1820 or 1821.

Q. Now, Mr. Dowling, by this description—that is, the description I have just read to you—would you have recognized it—been able to recognize the land; would you have known the land by this description?

Objected to as leading.

A. Why, yes, sir; I would.

Q. You would have known it?

A. Yes, sir.

Q. How would you have known it?

A. Stokes was on the east, Cabanne on the west, Philipson and Gratiot on the south.

Q. Did you ever know of Hammond having possession of any other tract of land in that neighborhood at that time?

A. No, sir.

Q. Well, do you know, of your own knowledge, was there any other tract known as the Hammond tract in that neighborhood?

A. Not to my knowledge, sir.

Q. Well, was that place not generally known in 1823 as the Hammon- tract of land?

Objected to as leading and suggestive.

A. I never heard it called the Hammond tract, but I heard it called the Hammond spring.

Q. Did you ever hear it called Hammond's land? Did you ever hear it called Hammond's land there?

A. The Hammond place. I don't know as the word "land" was put to it, but the Hammond place.

Q. Did you know Peter Lindell?

A. Yes, sir.

331 Q. You say you knew Peter Lindell?

A. Yes, sir.

Q. How long did he occupy this land out there?

A. Well, sir, I don't think I ever saw him on the land.

Q. Do you know whether he occupied it for several years or not?

A. That land was called the Lindell pasture. A large body of that land went by the name of Lindell's pasture.

Q. What time, do you remember, he first took possession of the land out there?

A. What?

Q. Do you remember when Lindell first took possession of the land out there?

Objected to as leading and suggestive.

A. No, sir; I don't, but several years ago.

Q. As much as fifty years ago?

Objected to as leading and suggestive.

A. I can't say about that. I will say about fifty; yes, sir; over that.

Q. Over forty?

A. Yes, sir.

Q. You can't state the beginning of his possession, can you—Lindell's possession?

A. No, sir.

Q. You know, as a matter of fact, it has been a great many years, don't you?

A. Yes, sir.

Q. Would you say it was fifty years?

Objected to as leading and suggestive.

A. I will say over fifty years. He may have held it longer than fifty, but I can't say positively.

Q. Mr. Dowling, in those days—that is, back in 1820, 1821, 1822, and 1823, along there—was it customary to designate tracts of land by the name of their owners?

332 Objected to as leading and improper.

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. Well, what was the custom in those days as to designating tracts of land by the names of their owners, if you know?

A. What is it?

Q. What was the custom in those days as to designating tracts of land by the names of the owners, if any?

A. Why, they usually, when a person lived on a place—for instance, the Hammond tract, called it the Hammond place. The Cabanne place or the Gratiot place the same way.

Q. It was generally named after the person who lived there, was it?

A. Yes, sir.

Q. How were the springs named—after the persons occupying or owning the land?

A. Some of them and some of them not.

Q. The tract of land went by the name of the spring generally?

Objected to as leading.

A. Yes, sir.

Q. Now, referring to the description I have read to you, a tract of land containing two hundred and forty arpens, more or less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, on the east by land of William Stokes and others, including the big spring known as the Hammond spring, will you state whether at that time, if the description had been given you, you could have designated and pointed out the land?

A. If I was out there and they asked, of course, I could tell, but I couldn't tell anything about the quarters or the location of the land.

333 Q. Yes; I understand.

A. I knew exactly where Stokes' southeast corner was; that came within about five feet of the old Manchester road. Here is the Manchester road (indicating), running this way. Stokes' fence ran north and south, and so it came within about five feet of the Manchester road—that is, the southeast corner.

Mr. JEWETT:

Q. The southeast corner of the Stokes land?

A. Yes, sir.

Mr. LEWIS:

Q. Could you have designated from the old house and the spring there—could you have designated that tract as the Hammond tract of land; do you think you could or not?

A. I think I could.

Q. You think, Mr. Dowling, if that property was sold by the sheriff with that description that the persons who lived in the neighborhood at the time could have designated it—pointed it out?

Objected to as leading and suggestive.

A. Any person who was acquainted in the neighborhood could.

Q. You have stated that it was customary in those days to name the spring after the owner?

A. Yes, sir.

Q. Also the tract of land?

A. Yes, sir.

Q. This description refers to a piece of property including a big spring known as the Hammond spring?

A. For instance, there was one spring here; a party lived on the land, but it never went by his name, but it went by the name of the original owner—Cardinal spring.

Q. Is that such a description as the property would have been known by among them people, citizens of St. Louis, at the
334 time, do you think?

Objected to as leading.

A. It would be known by the people who have travelled out in that country there.

Q. Do you say you would have any difficulty in locating it?

A. No, sir.

Q. You state you don't know whether all the people in the city would know it, but the people in the neighborhood would?

A. The people in the neighborhood and all those men who travelled backwards and forwards, and men who cut hay out there in the prairie; they all knew it.

Q. It was generally known in that neighborhood by the name of the Hammond Spring tract, was it?

Objected to as leading.

A. Yes, sir.

Q. Do you know whether Mr. Hammond ever cultivated any part of the tract or not?

A. Well, sir, I saw about four or five acres of corn on the south and west *part* of the house; I never saw any cultivation on the north or east.

Q. Do you know that the land was cultivated on the west and south of the house then?

A. Yes, sir.

Q. West and south of the house?

A. Yes, sir; west and south.

Q. Well, by whom was it cultivated, do you know?

A. Well, I don't know.

Mr. JEWETT:

Q. Now, speak of your own knowledge.

A. I am speaking of my own knowledge. I am not giving any hearsay evidence at all.

335 Mr. LEWIS:

Q. It was called the Hammond farm, wasn't it?

A. Yes, sir; the Hammond place.

Q. Did you ever see anybody ploughing there?

A. I never did.

Q. Dropping corn?

A. I saw one or two negroes there, I think, on the place.

Q. What were they doing, working about the farm?

A. I don't think they were working at anything at the time I saw them.

Q. Was it understood at that time that they were Hammond's negroes?

Objected to as leading and improper.

A. No, sir; I never understood whose negroes they were.

Q. When was it cultivated; about the time it was known as the Hammond place?

A. Yes, sir.

Q. That was about 1823?

A. Yes, sir; 1822 and 1823.

Q. Well, the corn-field was on the south and west, was it; most of it?

A. Yes, sir.

Q. On the south and west of this house that stood there?

A. It was a small portion; I don't think there was over about four or five acres.

Q. Who occupied the house, if you know, in 1823?

A. I don't know who occupied it; I never was in the house then.

Q. Were you in the house in 1824?

A. Yes, sir; I was out at camp meeting.

Q. What was the circumstances of your staying there?

A. Well, just about dark or dusk there came a tremendwous storm; it blowed the lights out and everybody made for the house;
336 I was amongst the first that got in the house, and so they had me stay there that night. It was a tremendwous storm.

Q. That was about what time, what month?

A. August or September, 1824.

Q. You have stated that it was customary to name a place after the name of the owner of the spring. Will you state whether there were a good many springs around St. Louis at that time?

A. A good many which?

Q. A good many springs aroung St. Louis at that time.

A. Yes, sir; a great many at that time.

Q. They were known by the names of their owners?

A. Some were and some were not.

Q. Now, Mr. Dowling, if you had desired in 1823 to designate Mr. Hammond's property, point out the land to a person in the neighborhood or in the vicinity, how would you have designated it or spoken of it?

A. By the spring. I would have designated it by the Hammond spring.

A. By any surveys?

A. No, sir; I couldn't tell anything about the surveys.

Q. You knew if it was generally understood in the neighborhood to be Hammond's land?

Objected to as leading and suggestive.

A. Yes, sir.

Q. Did the land of Philipson lay south?

A. South; yes, sir.

Q. And the Gratiot tract?
A. South.
Q. South of this tract?
A. Yes, sir; Henry Gratiot, he occupied that.
Q. Cabanne on the what?
A. Cabanne, he owned west.
337 Q. Stokes on what?
A. East.
Q. Suppose you wanted to designate the Lyons land in those days, how would you have spoken of it?
A. Rock spring. You mean the Philipson land, don't you?
Q. Yes, sir.
A. It was formerly called Lyons' spring. For the last seventy years it was known as Rock spring.

Mr. JEWETT:

Q. For the last seventy years?
A. Yes, sir; before that the old French used to call it Lyons' land, from the fact a yellow fellow by that name lived on the land.

Mr. LEWIS:

Q. How was it about the Hammond tract?
A. Well, some of the oldest people, old French, used to call it the Marie springs.
Q. Then what?
A. When Hammond got there and owned it, it went by the name of Hammond's spring.
Q. Well, how would you have known it in those days—I mean in 1822?
A. Hammond's springs.
Q. Do you refer to the tract of land now or merely to the spring itself or to both?
A. Which?
Q. Do you refer to the tract of land now or merely to the spring or to both?
A. Yes, sir.
Q. You refer to both of them, do you not?
A. I don't understand.
Q. You were speaking about the Hammond spring and the tract of land, I believe. I understood you to say you had known it by the name of the Hammond tract.
A. Yes, sir; called the Hammond place or Hammond spring.
Q. And the Hammond Spring tract, was it or not?
A. Yes, sir.
338 Q. You are not interested in this suit in any way, Mr. Dowling?
A. No, sir.
Q. When did you first become acquainted with Samuel Hammond—about what year?
A. I never talked to the man in my life.
Q. You knew him when you saw him?

A. Yes, sir; he built a couple of houses. I knew him. He built a couple of houses on the east side of Third street, just above Spruce, I think, in 1819.

Q. This was quite a village at that time. St. Louis was not very large. You know the people very well?

A. Everybody that lived here knew most everybody at that time.

Cross-examination.

By Mr. JEWETT:

Q. What year did you say you came here?

A. In 1817.

Q. And you were then——

A. Eleven years old.

Q. You were eleven years old?

A. Yes, sir.

Q. Did you go to school soon after you came here, from eleven until you were twenty-one or twenty?

A. No, sir.

Q. What did you do from the time you were eleven?

A. Went to school, of course, here, but not until I was twenty-one.

Q. Not until you were twenty-one? How long did you go to school, then?

A. Well, I don't know. I went to school here with old Shepard, along about 1824 or 1825.

Q. You didn't go to school, then, as early as 1820?

A. Oh, yes, I did; I went to school when I first came here.

Q. Then you continued in school up to 1823, 1824, or 1825?

—. Yes, sir.

Q. Until the year 1823, 1824, or 1825?

A. Yes, sir.

Q. Well, did you work at any trade from the time you
339 were seventeen or from the time you came here until 1824 or 1825?

A. Yes, sir; I went to a trade in 1820.

Q. You continued steady at the trade as a boy how long?

A. I worked—I served a little over seven years.

Q. What was the trade?

A. Carpenter.

Q. Well, you worked steady during that time at the trade, did you?

A. Yes, sir.

Q. Were you ever with any surveyor when he surveyed lands out there in 1818, 1819, and 1823?

A. No, sir.

Q. Did you ever help run any lines to the land out there in that vicinity?

A. None.

Q. From 1817 to 1823 or 1824?

A. None.

Q. Did you ever have anybody walk around with you and point out to you the lines and boundaries of that land?

A. No, sir; no one.

Q. Did you know old man Cabanne personally as early as 1823? The old man's name was——

A. John P. Cabanne. I knew him in less than two years after I came to St. Louis.

Q. You knew him by sight?

A. Yes, sir; he lived there on the southeast corner of Vine and Main.

Q. How long did he continue to live there?

A. I think he moved out to his place about 1820 or 1821.

Q. Out west there, way over on that land?

A. Yes, sir.

Q. Well, from 1820 or 1821 to 1825, did you ever go to his house way out in the woods there?

A. Oh, yes, sir; used to go out there Sundays. I used to go out there week days.

Q. Out to Cabanne's place?

A. Not particularly to Cabanne's place, but through the prairies after the crows.

340 Q. You didn't visit Cabanne's house?

A. I have been to his house several times.

Q. I mean up to 1824 or 1825. Were you ever at Cabanne's house before 1824 or 1825?

A. I couldn't say whether I was or not.

Q. You have no recollection of it?

A. No, sir.

Q. Did anybody live down by Gratiot's and Philipson's place at that time, on the Gratiot and Philipson land, as you call it?

A. In about 1823 there was a club got up there. George H. Kennerly was one; there was a man by the name of Alexander, and others, and a man by the name of Oldenburg, who started a place of amusement, and they built a dance hall, and that was a great place here for a resort along that time—say from 1823 to 1825.

Q. Was that dancing hallway south of the Hammond spring on the Philipson tract?

A. Yes, sir.

Q. What was there then to make a dance hall out there by the Rock springs?

A. People used to go there for amusement.

Q. Were there any inhabitants around Rock springs at that time?

A. No, sir.

Q. Then they went out in the woods for a dancing hall?

A. It wasn't much woods there; it was mostly prairie.

Q. Well, went out there in the open fields?

A. Yes, sir.

Q. Did they build a dancing hall in an old field?

—. There was no old field there that I saw; none fenced in; it was all prairie.

Q. I mean an open prairie, was it?

A. Yes, sir; there was timber right where the spring is and right south of that, a kind of a rise; there is where the dancing hall was.

341 Q. Did Philipson live anywhere around there then?

A. No, sir; he was living here.

Q. In the town, wasn't he?

A. He was living here on Spruce street, just a little east of Second street.

Q. Well, now, at that time you didn't know that was Philipson's land, did you? You learned that afterwards?

A. Well, I don't know when I learned it *it* was Philipson's place.

Q. You don't know when you did learn it was Philipson's land?

A. Well, I learned it about the time John Mullanphy got his property. I don't recollect when that was.

Q. It was along after 1825, wasn't it—1824 or 1825?

A. Yes, sir; it was after that.

Q. In 1823 you didn't know anything about Philipson's living way south of this land, did you?

A. I was at that place in 1819; drank water out of it.

Q. Did you see Philipson there?

A. I never saw Mr. Philipson on the place in my life.

Q. What water do you mean—Rock spring?

A. Yes, sir.

Q. You don't know Philipson was there?

A. I never saw him there. There were several parties there. They kept kind of a place of entertainment.

Q. It wasn't called Philipson's land at that time, was it?

A. It went by the name of Rock spring.

Q. And you didn't know who owned it then?

A. I don't know when it was—many years ago. Mullanphy, I believe, got hold of it.

Q. Had you any knowledge how much land Cabanne owned west of this survey?

A. No, sir.

342 Q. You didn't know how far his land extended north or south, did you?

A. No, sir; I knew none of the lines.

Q. Nor bounds?

A. No, sir.

Q. Did you know anything about where Stokes lived at that time, from 1817 to 1824 or 1825? Where did Stokes live?

A. Well, Stokes lived, sir, I think—when he lived on that place he built a large brick house, square brick house, on that land.

Q. Didn't the tract extend clear east to Garrison avenue?

A. Well, sir, the town is all built up that way. I can't plan it out where the house stood, even.

Q. You don't say that house was anywhere out by this tract of land known or called survey 2500? The Stokes house I mean.

A. I don't know the number of the surveys; nothing about them.

Q. Don't you know, Mr. Dowling, enough to know that Stokes' house was near Garrison avenue, where old Stokes lived at the time?

A. The town is changed so much I couldn't put my foot on the place again.

Q. Don't you know where Garrison avenue is?

A. I do.

Q. Don't you know where Grand avenue is?

A. I do.

Q. Wasn't that Stokes house east of Grand avenue, where Grand avenue is?

A. I can't tell now.

Q. What tract of land did Stokes live on? Do you know? What was the survey called?

A. I don't know what the survey was called. I know Stokes lived there.

Q. Well, did you know Stokes before he built that big house?

A. I think I did, sir.

Q. You ain't certain?

A. Yes, sir; I think I am, sir.

343 Q. Did you ever know of his living anywhere before he lived in that house?

A. No, sir.

Q. Do you know where he lived before he went there?

A. No, sir.

Q. That land wasn't called Stokes' land, was it, that you ever heard of, in 1823?

A. Yes, sir; it was called Stokes' land.

Q. Well, where his house was?

A. Yes, sir.

Q. Where his house was, was called Stokes' land, was it?

A. It stood about three hundred feet from where the fence came in front of the Manchester road, and stood north.

Q. Of the Manchester road; but the Manchester road then ran clear into town, didn't it?

A. Yes, sir. You went out a certain distance, then you turned to your left, and then the southeast corner of Stokes' fence came within about five feet of the Manchester road.

Q. You are talking about the fence that was there after Mr. Stokes built that big house?

A. Yes, sir.

Q. You don't know the year he built that big house, do you?

A. No, sir.

Q. Can't you tell about the year?

A. At the time he built the house?

Q. The year he built it in.

A. I think he built it in 1819.

Q. Built that house in 1819?

A. I think it was 1819. It might have been 1820, but I think it was 1819. I won't be positive, but I think it was 1819.

Q. You can't say where that house was as to the present street, whether it was east of Grand avenue or not?

A. Well, I could tell if I was to go out there. I know where Grand avenue is, but the town is all built up, streets laid
344 there, and the old landmarks are done away with.

Q. Don't you think you could go and find where the Stokes house was?

A. I don't know whether I could or not.

Q. You never saw Samuel Hammond out in that section of the country, did you?

A. Never did, sir.

Q. He never told you that that was his place or his negroes, did he?

A. I never spoke to the man in my life, as I know of.

Q. It was only common talk that that was Hammond's spring?

A. Yes, sir.

Q. And those his negroes?

A. It was known by everybody out in that section there.

Q. That was the common talk?

A. Yes, sir; Hammond's spring.

Q. You didn't know how far what they called Hammond's place extended, did you, one way or the other?

A. As I told you before, I don't know the corners of the land.

Q. You don't know whether he claimed to own fifteen or twenty acres or five hundred acres, do you?

A. No, sir; not of my own knowledge.

Q. Did you know William Stokes at that time—in 1818 or 1819 or 1820?

A. Yes, sir.

Q. Where did he live?

A. I don't know where he lived. I used to see him in the city here.

Q. You didn't know that he owned any land out there, did you, in 1820?

A. I saw him in town after he lived out there.

Q. Well, did he live out there in 1820, anywhere?

A. Yes, sir.

Q. Where did he live in 1820?

A. In this house on that Stokes place.

Q. Where was the house, did you say; that one by the Rock spring, do you mean?

345 A. Oh, no; not the Rock spring; it is east of this Hammond spring.

Q. Oh, yes, sir.

A. There is where it was.

Q. But you don't know how far east?

A. Don't know which?

Q. You don't know how far east of the Hammond spring that Stokes house was?

A. Well, no, I can't tell now.

Q. Who is there here, Mr. Dowling, that knows exactly where the Stokes house was that is alive now?

A. I will tell you. I suppose Cozens knows.

Q. Who, A. Cozens?

—. I doubt very much whether you will find very many living now who can tell you where that house was.

Q. I heard Mr. Darby tell where it was very frequently. I thought I heard you tell where it was, too; I may be mistaken about it.

A. When Stokes left I think there was a Methodist preacher there by the name of McAllister. He was the first one that occupied it after Stokes; then Benoist, and then Darby.

Q. What was the condition of the land around that Hammond spring in from 1819 to 1823, Mr. Dowling—was it bushy or woods or prairie, or what was it?

A. Woods, a part of it. Right back of the woods was what we call this here oak.

Q. Scrub oak?

A. Kind of scrub oak; about twenty feet high, I suppose.

Q. Well, was the Hammond ground covered with those?

A. Yes, sir; on the north side, and all east of that was prairie; south was prairie.

Q. South was prairie?

A. And east was prairie.

Q. And west of the spring and south was this chenoa?

A. Yes, sir.

Q. Scrub oak?

346 A. Yes, sir; there was very little timber in the country at that time, excepting this thorn locust, scattered over the prairie, and plum trees.

Q. How far west of the Hammond spring was there any clearing, do you think, before you struck the scrub oak?

A. There was no prairie, I believe, back of the place there.

Q. West of his spring?

A. No, sir; except where it was cleared out.

Q. What cleared ground there was west of the spring, then, was cleared ground, not prairie, was it?

A. Why, I think so.

Q. Well, how much of it was there in 1823?

A. There might be a little more; I don't know how much, but I think there was about something like five acres of corn I seen there.

Q. That was south and southwest of the house, you say?

A. Yes, sir. I suppose they raised vegetables; one thing or another; I never noticed.

Q. You can't tell the number of rods, feet, or yards the cleared ground went west of the spring then, can you?

A. No, sir. I know it was a thicket right up to where the camp-meeting was.

Q. How far was the camp-meeting from the spring?

A. I can't say; I suppose not more than nine hundred feet.

Q. Which way was it from the spring?

A. North. That is a mere guess.

Q. Well, as near as you can recollect, you mean to say?

A. Yes, sir; about nine hundred feet.

Q. It is not guess-work that the camp was north of the spring, is it?

A. Sir?

Q. It isn't guess-work that the camp-meeting was north of the spring?

A. I think not. Say here is the house (indicating); there
347 is the camp-meeting, right in that direction.

Q. Well, that would be north out there?

A. Yes, sir.

Q. You know north when you are out there, I take it?

A. Well, I think I do.

Q. Did you as a boy at that age—when you were a boy at that age, in 1823, did you know the points of the compass?

A. Well, of course, you give me a compass and I could tell.

Q. Well, when you stood in a field could you tell which was north, east, south, or west?

A. I could tell by the sun, I suppose, which was south, north, east, or west.

Q. Do you think you could have done that when you were a boy, in 1823?

A. Why, yes, sir; I think I could. I could tell which was south and north. I have travelled over that prairie a great deal when I was young.

Q. Did you study geography in school any?

A. Not much.

Q. Or was it merely reading, writing, and spelling?

A. Reading, writing, spelling, some geography and grammar; such things as that. The first school I went to was a one-story log, on the *on the* east side of Main street, between Olive and Locust.

Q. You never heard how much land was called Hammond's land out there then, did you?

A. No, sir.

Q. You never heard anybody say that he owned anything more than that right around the spring then, did you?

A. Never heard the thing argued.

Q. Never heard the thing discussed at all?

A. Except since this suit came up.

Q. Now, Mr. Dowling, let me give you this description: "A tract of land containing two hundred and forty acres, about
348 three miles west of St. Louis, bounded west by Cabanne, south by Gratiot, and east by Stokes and others;" would you have known where that was at that time?

A. I don't know.

Q. Without saying a word about the spring?

A. I can't say whether I would or not.

Q. It was the spring that fixed the locality in your mind, wasn't it?

A. Of couse it was; it was notorious, that spring was.

Q. It was notoriously called Hammond's spring?

A. Yes, sir; because it was one of the finest springs in the country.

Q. The description I gave you would not have located that spring, would it?

A. Well, when I was a boy, I don't recollect.

Q. When you were a boy if anybody had told you that Hammond's land, two hundred and forty acres, three miles west of St. Louis, bounded west by Cabanne, south by Gratiot and Philipson, east by Stokes, would you have known where it was?

Objected to as immaterial and irrelevant.

A. Well, I can't say whether I would or not at that time?

Q. Is it the fact, then, that the spring is what enabled you to locate it as the Hammond land?

A. Those springs were notoriously known amongst the people as the Hammond springs.

Q. It was called the Hammond spring?

A. Yes, sir.

Q. We don't doubt that, Mr. Dowling. You have testified before in this case, haven't you?

A. Yes, sir.

Q. You have testified several times, haven't you, in this case?

A. I don't know; I think I have testified only once before; I may have testified more than that, but I don't recollect.

Q. You were employed by the defendants in this case to
349 take some old people out on the ground and point out the localities to them in one of these cases—common field lots, and so forth?

A. Yes, sir; I did take some old people out there.

Q. You took an old negro woman and some others out there?

A. Yes, sir; I did.

Q. It was at the request of the defendants in this case, wasn't it?

A. Yes, sir; it wasn't for Mr. Henderson, I don't think. I forget whom it was for.

Q. It was for the defendants in these Hammond cases, wasn't it?

A. I think so. I will tell you now who it was; it was Collins, one of them, I think; Coleman was the other one, I think; they went out with me, and it might be a negro. I don't know who.

Q. So that you have had considerable discussion about these boundaries for several years lately, haven't you?

Objected to as argumentative.

A. Well, I have heard hearsay about that, but I don't know of it of my own knowledge.

Q. You don't pretend to say that you knew the metes and bounds in 1823?

A. No, sir. I know I didn't.

Q. Then, substantially, all you know about that property out there was that that was called Hammond's spring, and the ground around it was reputed as being Hammond's ground, wasn't it?

A. Yes, sir; that is it.

Q. That was the substance of your knowledge, wasn't it.

A. Yes, sir.

Q. In 1823?

A. Yes, sir.

Q. You have no recollection of anything about this sale of Hammond's land, have you, by the sheriff in 1823?

A. No, sir.

Q. You didn't see the advertisement that you know of, did you?

350 A. No, sir; if I did I don't recollect it.

Q. Never heard anything about it at the time?

A. No, sir. I knew all the sheriffs at that time and deputies.

Q. In 1823?

A. Yes, sir.

Q. Do you remember who was sheriff in 1823?

A. Yes, sir; I remember.

Q. Whom do you think?

A. Let me see.

Q. I don't ask you for any other time than the time this land was sold.

A. Well, I think Joseph C. Brown, and then after him came in——

Q. Joseph C. Brown; in 1823, I asked you about. You think Joseph C. Brown?

A. That might be John K. Walker.

Q. John K. Walker after Brown?

A. Oh, Brown was the first under the State government, and he was appointed by the judge here under the territorial government, and, I think, he served four years; that is my impression.

Q. That would bring him down to 1825?

A. Yes, sir; and then came Walker, and then came Simpson, then came in Walker again; then came in James Brotherton; then Marshall Brotherton. I can tell you all the sheriffs we have had here for the last seventy years; it is my impression that Joseph C. Brown was the sheriff here at that time; John K. Walker was his deputy.

Q. John K. Walker was the deputy for Joseph C. Brown?

A. Yes, sir; and after Brown's time John K. Walker was elected sheriff, serving four years, and then he came in again after that—after Simpson's time. I believe he served four years more.

Q. Do you know John K. Walker's handwriting; would you, if you saw it?

351 A. Well, I have seen it. I couldn't say whether I would know it now or not. I have seen him write many a time.

Re-examination.

By Mr. LEWIS:

Q. Was there any house, Mr. Dowling, between Gratiot's and Hammond's house?

A. What?

Q. Was there any house between Gratiot's and Hammond's?

A. Well, sir, between Gratiot's and Hammond's houses I don't think there was a house. I recollect when the only house in that whole prairie was Abraham Gallatin's. There was the race course, north of the big, grand prairie. Then you came to the Hammond house; then you came to Cabanne's. Them is all the houses I recollect. There was a little kind of shanty there where the Episcopalian burying ground is now. That was no house, only about 6 by 10. They had it to put their tools in.

Q. I understood you, in your direct examination, Mr. Dowling, to say that the Hammond tract was lying between Gratiot's land on the south, Cabanne's land on the west, and Stoke's land on the east, including the big spring, known as the Hammond spring. There was no difficulty in designating that land as the Hammond tract?

A. I think not.

Recross-examination.

By Mr. JEWETT:

Q. Don't you testify to that very much from knowledge you have acquired lately, Mr. Dowling?

A. No, sir.

Q. You don't pretend to say now you knew those boundaries in 1823?

A. I told you I did not.

Q. Very well; I say I understood you that you didn't know them in 1823.

352 A. For a good many years I knew that was the Hammond spring. It was notorious amongst everybody.

Q. Yes, sir; and you could have told if anybody had said they were going to sell the Hammond spring—you would have known where it was, would you?

A. Of course, I would. I knew the directions. Here was Philipson, Gratiot, and Cabanne and Stokes here (indicating). They all corresponded, just as I told you.

Q. I was going to ask you what kind of a house this was *this was* you say was at the Hammond spring.

A. It was a one-story log house, with a porch in front of it.

Q. And a one-room house, wasn't it?

—. I believe so.

Q. How many of you got into it that night?

A. Oh, God, it was a crowd.

Q. Was the house as big as this room, twelve feet square, say?

A. Yes, sir.

Q. Was it fifteen feet square?

A. Well, I don't know. I suppose the house was about twenty feet long in front and about fifteen or sixteen feet deep.

Q. And a one-story log house?

A. Yes, sir; with a porch.

Q. Occupied at that time by some negroes?

A. Well, I couldn't answer that. I couldn't tell you how many negroes. I have seen one or two negroes there That is all I ever saw there in my life.

Q. You don't know whether there were any there that night that claimed to be occupants of that house?

A. The house was crowded with white people.

Q. You didn't claim to know whether any negroes claimed to live there then, do you?

A. I didn't. I didn't know whether there were any negroes there that night or not.

353 Q. Were you ever there when you saw a negro family living in that house—before 1823, I mean, or 1824?

A. No, sir; I passed by there, but I don't believe I was ever in that house except that one time.

Q. And you didn't take notice enough to know whether there was any family living there before that time or not?

A. I didn't; I think the house was occupied.

Q. But you can't say positively?

A. No, sir; but I think it was occupied all the time there for many years.

Q. Well, have you any knowledge of it, not what you think, but have you any knowledge it was?

A. Well, I passed by there and the doors were open and everything. I supposed there was a family in there. I don't know.

By Mr. LEWIS:

Q. The house had furniture in it, didn't it? The house had something in it; it had furniture—something of that kind in it?

A. How is it?

Q. The house was furnished—I mean they had something in there, a stove and some other furniture?

A. Such as it was.

Q. Well, it was furniture?

A. Yes, sir.

Q. People were living in there?

A. Yes, sir.

By Mr. JEWETT:

Q. What was the furniture? Let us know.

A. Well, I never noticed what kind it was; I didn't take a description; I ain't going to pretend to tell.

Q. It was a regular negro hut, wasn't it?

A. Well, I have seen negroes better fixed up than what that was.

Q. It was a poor negro hut, wasn't it?

A. Yes, sir.

354 R. DOWLING.

Subscribed and sworn to before me this 14th day of March, 1888, at the place and between the hours first aforesaid.

[SEAL.] VIRGIL M. HARRIS,
Notary Public.

Also the correspondence between the district attorney and the department at Washington in relation to the discharge from bankruptcy or his application therefor of Samuel Hammond, concerning a claim that the Government had against him, together with the correspondence in connection therewith.

Objected to as irrelevant, incompetent, and immaterial. Objection sustained.

By Mr. REYNOLDS: We desire in addition to that to offer the papers in the Whittlesey protest to show the final action of the department, to show when the patent was issued and when approved, and the letters and correspondence in reference to the issuance of the patent.

355 *C. C. Whittlesey's Protest, April 17th, '60.*

ST. LOUIS, *April 17th*, 1860.

To the Secretary of the Interior, Washington, D. C.:

The Pacific Railroad Company, by Whittlesey, their attorney, appeal from the decision of the Commissioner of the General Land Office in ordering a patent to issue upon New Madrid survey No. 2500, in T. 45 N., R. 7 E. of 5 P. M., in the name of Joseph Hunot, upon patent certificate 492, issued in place of pat. cert. No. 404, issued by the recorder of land titles at St. Louis Feb'y 2, 1833.

And for causes of appeal the Pacific R. R. Company show that said land or part thereof, to wit, fr. sections 8 and 18, *were* granted by act of Congress to the State of Missouri on June 10, 1852, and by the State of Missouri to said Pacific R. R. Co. by act of Dec. 25, 1852.

And said Pacific Railroad Company show that Peter Lindell, claiming under Joseph Hunot, has no title to the land included in said surv. No. 2500 for several reasons:

1. Said survey No. 2500 embraces part of the St. Louis Grand Prairie common fields, and the said Peter Lindell is claiming title to said fields by limitations.

2. That by the decision of the Supreme Court of the United States in the case of Easton *vs.* Salisbury, 21 Howard's U. S. Rep., 426–431, the New Madrid location under N. M. cert. No. 161 was absolutely void because not located within one year after the act of Congress of April 26, 1822.

The case of Bagnall *vs.* Broderick, 13 Pet. R., 436, decides that the return of the officially approved survey by the surveyor general to the recorder of land titles constitutes the location of the land which binds the Government, and that the claimant must assent to the exchange is decided by the U. S. Sup. C't in Lessieur *vs.* Price, 12 Howard Rep., 59; Cabanno *vs.* Lindell, 12 Mo. R., 184.

By reference to the papers in this case it will be found that application was first made to locate N. M. C. 161 in Howard county, Missouri. See application of Nov. 14, 1816, by Rufus Easton, assignee and attorney for claimant, and that afterward application was made to locate the same in T. 45 N., R. 7 E. See application of June 16, 1818.

By reference to the papers and records it will be seen that the survey No. 2500 was not returned to the recorder of land titles by the surveyor general until Feb. 2, 1833, at which date there was no authority to make the location, as decided in Easton *vs.* Salisbury, 21 Howard R., 426.

The location not having been made in accordance with law, so much of sec. 8 & 18, T. 45 N., R. 7 E., as was not included within the Grande Prairie common-field lots became and was the property of the United States, and passed to the State of Missouri by act of Congress of June 10, 1852, and to the Pacific R. R. Co. by act of Missouri Dec. 25, 1852.

The order of events will appear by the following tabular statement:

Confirmation to Joseph Hunot by act Apr. 29, 1816; New Madrid cert. No. 161 issued to Joseph Hunot for 480 ac. (cert. 37 for 160 having been previously issued) Aug. 12, 1816; Nov. 14, 1816, Rufus Easton, assignee and att'y of Joseph Hunot, applies to locate lands in Howard Co. — Nov. 4, 1816; June 16, 1818, application made by Rufus Easton to locate in fr. sec. 17, 45 N., R. 7 E., fr. sec. 18 and off east side of fr. sec. 8 for quantity survey No. 2500, made by Joseph C. Brown, d'y sur., June 23rd, 1819.

Survey No. 2500 returned to rec. land titles Feb. 2, 1833, and thus land located.

Feb. 2, 1833, patent certificate No. 404 issued by order of recorder of land titles.

Pat. cert. 404 & sur. 2500 set aside and new survey No. 2500 issued Feb. 10, 1859, by Jno. Loughborough, surv. gen.

New pat. cert. No. 492 on new survey 2500 issued Feb. —, 1859.

The Pacific Railroad Co. therefore claim that the title vested in it before pat. cert. 492 issued, and that said cert. 492 & pat. cert. No. 404 were both absolutely void, and that said Co. is the legal owner of all lands in fr. sec. 8 & 18, T. 45 N., R. 7 E., 5 P. M., not embraced in same claim confirmed by act of Congress.

Said Pacific Railroad Company prays a hearing upon said matter before any patent shall issue to said Peter Lindell under Joseph Hunot, and objects to the giving of said patent to said Lindell as the assignee of said Hunot.

356 CHAS. C. WHITTLESEY,
Counsellor of Pacific R. R. Co.

Commissioner General Land Office, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May 14th*, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy, dated St. Louis, April 17th, 1860, signed "Chas. C. Whittelsey, counsellor of Pacific R. R. Co.," being an appeal from the decision of this office ordering a patent to issue upon New Madrid survey No. 2500, in T. 45 N., R. 7 E., of 5th P. M., Mo., in the name of Joseph Hunot, is a true and literal exemplification of the original papers on file in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner of General Land Office.

GENERAL LAND OFFICE, *August* 30, 1859.

The President's secretary for signing patents.

SIR: Your signature is requested to the patent herewith sent as recorded vol. II, pages 405 to 413, inclusive, in favor of "Joseph Hunot or his legal representatives," for a private claim in Missouri, survey No. 2500, patent certificate No. 492.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 28, 1881.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter, dated August 30, 1859, from Jos. S. Wilson, acting Commissioner of the General Land Office, to the President's secretary for signing patents in the matter of the claim of Joseph Hunot, in the State of Missouri, survey No. 2500, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

GENERAL LAND OFFICE, *August 30th*, 1859.

SIR: I have to request your signature to the patent herewith as recorded vol. II, pages 405 to 413, inclusive, in favor of
357 "Joseph Hunot or his legal representatives," for a private claim in Missouri, survey No. 2500, patent certificate No. 492.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

J. N. Granger, Esq., recorder of the Gen'l Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 20th*, 1881.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of the letter, dated August 30th, 1859, addressed to J. N. Granger, recorder of the Gen'l Land Office, is a true and literal exemplification from the original on file in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

The defendants here rested their case, with the privilege of introducing any evidence desired in the morning.

It is stipulated that all the evidence in relation to this list of confirmations, &c., may be read from the books instead of being copied into the record.

Rebutting Evidence.

By Mr. JEWETT: We offer a letter from Joseph S. Wilson, Land Commissioner at the General Land Office, at Washington, dated April 6th, 1860, to Charles A. Bernard, recorder of land titles in St. Louis.

By Mr. REYNOLDS: We object to it for the reason that the patent was issued, signed, and recorded prior to the issuance of this letter.

Objection overruled.

GENERAL LAND OFFICE, *April 6*, 1860.

SIR: This office has drawn up the patent for what is known as the Hunot New Madrid claim, designated as survey No. 2500, in T. 45 N., of R. 7 E., of 5th p. md., Mo.; but, looking to the fact that in the papers received with Surveyor General Loughborough's report of 10th Febr'y, 1859, the opponents to the survey either contemplated or proprosed to seek by appeal the highest executive decision in the premises, the case was submitted to the honbl. Secretary of the Interior on the 22d December, 1859, for his revision, &c.

On the 5th inst., in a communication to this office—copy herewith—he decides as follows:

"If the parties who protest against issuing the patent, after having been advised of our decision, do not within a reasonable time thereafter take an appeal in the matter, the patent should be delivered to the claimant."

In view of said decision, you are instructed to notify the parties opposed to the preparation of said patent that if no appeal is filed in this office on or before the 7th of May next said patent will be

sent to you for delivery to the party entitled to receive it. Enclosed is our printed rules respecting appeals.

Very respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

A. Renard, Esqr., recorder of land titles, St. Louis, Mo.

358 STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of a letter from Jos. S. Wilson, Commissioner, to A. Renard, recorder of land titles, dated April 6th, 1860, as the same now remains on file in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said office, at the city of Jefferson, this 20th day of February, 1880.

JAS. E. McHENRY,
Register of Lands.

By Mr. JEWETT: Now we offer the opinion of the Secretary of the Interior in a letter addressed to the General Land Office, at Washington, to the Commissioner, giving his reasons why a patent may issue, dated Nov. 12th, 1860.

Objected to.

Opinion of Sec'y of Int.

DEPARTMENT OF THE INTERIOR, *November* 12, 1860.

SIR: Your report of the 10th May last submitted to me the case wherein C. C. Whittlesey, as attorney for the Pacific R. R. Company, appealed from your decision in favor of issuing the patent upon the location and survey No. 2500 of New Madrid warrant No. 161, issued to Joseph Hunot. After an examination thereof my decision is in favor of issuing the patent.

The original warrant was duly issued in Aug., 1816, and the survey made June 23d, 1819. The survey varied somewhat from the application to locate, but as the power to locate was with the surveyor general, who acted for the United States, as well as for the claimant, neither the Government nor third persons whose rights are not affected by the variance can interpose that objection where the party is satisfied and the location is made in compliance with the law.

It is contended by the attorney for the railroad that the location is void, inasmuch as the survey was not certified to the recorder of land titles at St. Louis till January, 1833; and the 2d section of the act of 26 April, 1822, places a limitation upon the location and requires the survey to be returned to the recorder prior to April 26th, 1823. (See Stat., vol. 3, p. 668.) The cases he cites—Bagnell *vs.* Broderick, 13 Peters, p. 436, and Lescieur *vs.* Price, 12 Howard, p. 74, and also those of Barry *vs.* Gamble, 3d Howard, p. 51, and Hale *vs.* Gaines, 22d Howard, p. 159—do establish the proposition that

until a notice or return of the survey is presented to the recorder of land titles at St. Louis and recognized by him it can have no force as against the United States, as it is incomplete under the requirements of the New Madrid act of 17th February, 1815; but this survey was returned to the recorder in January, and a patent certificate issued in February, 1833, and the location then became complete. If otherwise in accordance with law, the patent should issue upon the survey.

The act of 9th April, 1818, limited the time of applying for warrants under the act of 17th Feb., 1815, to the 1st January, 1819; and the 2d section of the act of 26th April, 1822, required that all warrants not located prior to the date of that act "shall be located within one year after the passage of this act."

Now, as the limitation in the act of 1818 is upon the acts and discretion of the claimants under the act of 1815, I am disposed to regard the act of 1822 also in that light. When that limitation expired there appears to have been nothing remaining to be done by Hunot or the claimants under him to complete his location. His warrant appears to have been returned to the officer and to have been on file with the survey. He had surrendered his land
359 at New Madrid or offered to do so, and it only remained with the officers of the United States to act in order to close the transaction. Hunot could not, at any time after the execution of the survey by the deputy surveyor and the filing and record thereof in the office of the surveyor general, have withdrawn his warrant for relocation without the concurrence of the executive officers entrusted with the completion of his title; and, as the warrant and survey remained on file when the act of 1822 expired, I do not think the limitation therein affects the rights of the claimants after the subsequent favorable action of the surveyor general and recorder in the case, although that action was had subsequent to the 23d April, 1823, nor do I think that the arguments and decisions of the Supreme Court of the United States in Easton *vs.* Salisbury, 21st Howard, 431, and Hale *vs.* Gains, 22 Howard, p. 159, are in conflict with this construction of the limitation in question. The decision in Barry *vs.* Gamble I regard as sustaining the view I had taken.

There is an allegation by some of the parties opposing the survey that the land was not liable to location; but, as no specific ground for such allegation is set forth, and your report states no objection of this kind, it is presumed to be untenable.

For many years this patent appears to have been withheld by your office because the original survey included some parcels of land which have been found to constitute parts of confirmed private claims. The claimant and attorney for the survey No. 2500 have recently assented to the reform of its lines and the introduction of proper exceptions in the patent so as to exclude the land embraced in such private claims; and I do not doubt the power of your office to make the corrections, with such assent, notwithstanding the intervening grant of lands to the State of Missouri for railroad purposes by act of Congress approved June 10, 1852.

Whatever title may exist in the State or her assignees appears

under that law to be susceptible of assertion in the courts, and the issuance of the patent on the New Madrid location appears to be just and legal and necessary in order that the claimants under it may have a standing of the like dignity. The patent and papers submitted with your report are now returned.

Very respectfully, your ob't serv't,

J. THOMPSON, *Secretary.*

Hon. Jos. S. Wilson, Commissioner of the General Land Office.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct transcript of a copy of a letter from J. Thompson, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office, as the same remains on file in this office.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed the seal of said office, at the city of Jefferson, this first day of April, 1880.

JAS. E. McHENRY,
Register of Lands.

Also letter dated November 12th, 1860, from the General Land Office, at Washington:

GENERAL LAND OFFICE, *November 12th*, 1860.

SIR: I transmit herewith the patent, as recorded in vol. 11, pages 405 to 413, in favor of Joseph Hunot or his legal representatives for the New Madrid claim (location certificate No. 161) for survey No. 2500, in township 45 north, range 7 east, 5th principal meridian, Missouri.

You will please note the issue on your records and then deliver the patent.

I also enclose herewith a copy of the Secretary's decision of this date affirming the action of this office in the issue of the patent.

I have apprised the Hon. Edward Bates, who has written to us in the matter, of this transmission. The purport of the decision you will make known to the appellants and all concerned.

Very respectfully, &c., JOS. S. WILSON,
Commissioner.

A. Renard, Esqr., recorder of land titles, St. Louis, Missouri.

17TH NOV., 1860.

Received the patent.

EDW'D BATES.

360 STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of a letter from Jos. S. Wilson, Commissioner of the General Land Office, to A. Renard, recorder of land titles, as the same remains on file in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said office, at the city of Jefferson, this first day of April, 1880.

JAS. E. McHENRY,
Register of Lands.

I offer another letter from the General Land Office, at Washington, to A. Renard, recorder of land titles in St. Louis, written in 1860.

By Mr. REYNOLDS: I make the same objection as to the other testimony.

Letter from J. S. Wilson to A. Renard.

GENERAL LAND OFFICE, *November 12th*, 1860.

A. Renard, Esq., recorder of land titles, St. Louis, Mo.

SIR: I transmit herewith the patent, as recorded in vol. 11, pages 405 to 413, in favor of Joseph Hunot or his legal representatives for the New Madrid claim (location certificate No. 161), for survey No. 2500, in township 45 north, range 7 east, 5th principal meridian, Missouri.

You will please note the issue on your records and then deliver the patent.

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I have apprised the Hon. Edward Bates, who has written to us in the matter, of this transmission.

The purport of the decision you will make known to the appellants and all concerned.

361 Very respectfully, your ob't servant,

JOS. S. WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December 28th*, 1874.

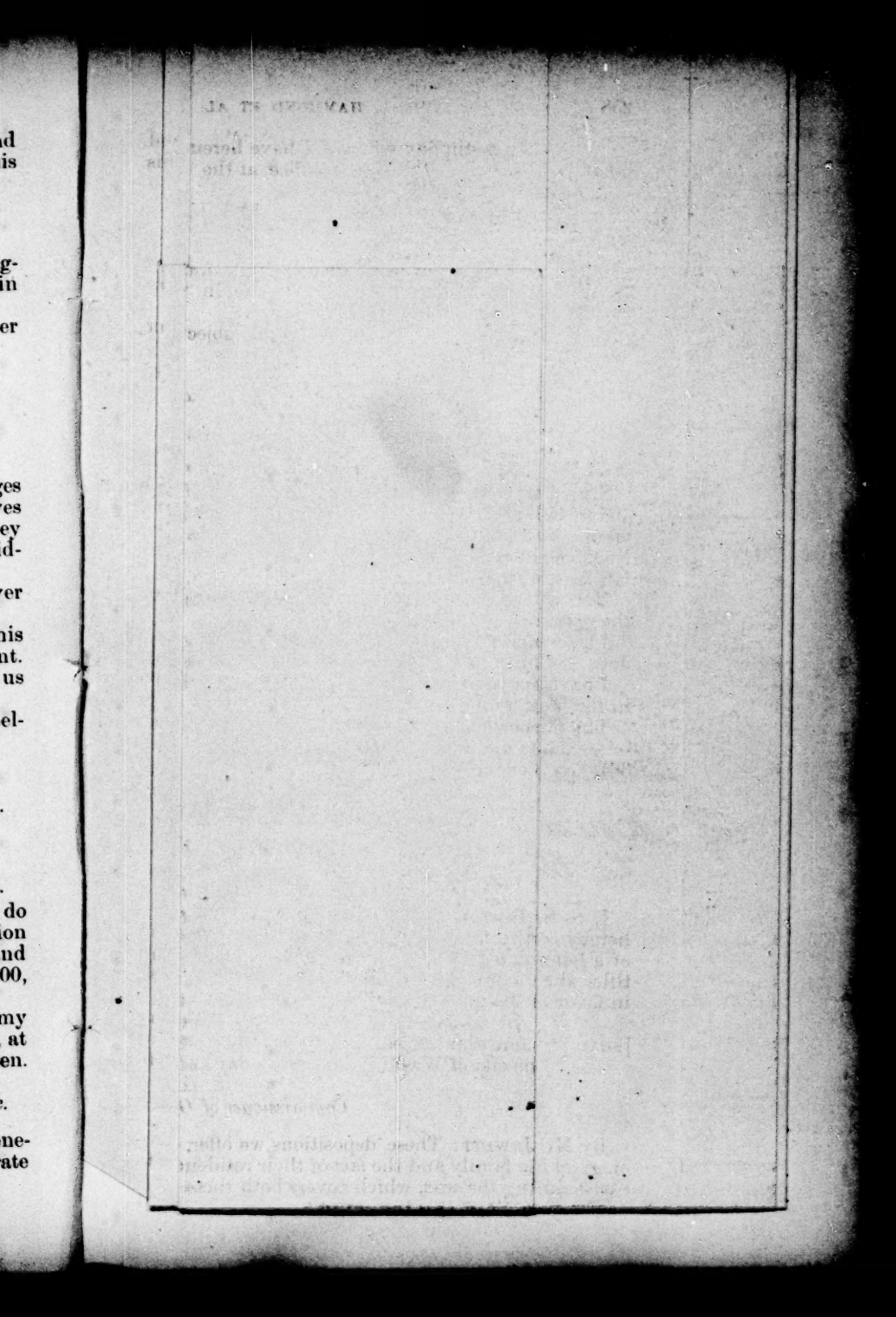
I, S. S. Burnett, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of a letter dated November 12th, 1860, to the U. S. recorder of land titles at St. Louis, Mo., transmitting the patent on survey No. 2500, in favor of Joseph Hunot or his legal representatives.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. S. BURNETT,
Commissioner of General Land Office.

By Mr. JEWETT: These depositions we offer, including the geneology of the family and the fact of their residence in the Confederate States during the war, which covers both these questions.

(See page 53 of this transcript.)



In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said office, at the city of Jefferson, this first day of April, 1880.

JAS. E. McHENRY,
Register of Lands.

I offer another letter from the General Land Office, at Washington, to A. Renard, recorder of land titles in St. Louis, written in 1860.

By Mr. REYNOLDS: I make the same objection as to the other testimony.

Letter from J. S. Wilson to A. Renard.

GENERAL LAND OFFICE, *November 12th*, 1860.

A. Renard, Esq., recorder of land titles, St. Louis, Mo.

SIR: I transmit herewith the patent, as recorded in vol. 11, pages 405 to 413, in favor of Joseph Hunot or his legal representatives for the New Madrid claim (location certificate No. 161), for survey No. 2500, in township 45 north, range 7 east, 5th principal meridian, Missouri.

You will please note the issue on your records and then deliver the patent.

I also enclose herewith a copy of the Secretary's decision of this date affirming the action of this office in the issuance of the patent.

I have apprised the Hon. Edward Bates, who has written to us in the matter, of this transmission.

The purport of the decision you will make known to the appellants and all concerned.

361 Very respectfully, your ob't servant,

JOS. S. WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December 28th*, 1874.

I, S. S. Burnett, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of a letter dated November 12th, 1860, to the U. S. recorder of land titles at St. Louis, Mo., transmitting the patent on survey No. 2500, in favor of Joseph Hunot or his legal representatives.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. S. BURNETT,
Commissioner of General Land Office.

By Mr. JEWETT: These depositions we offer, including the geneology of the family and the fact of their residence in the Confederate States during the war, which covers both these questions.

(See page 53 of this transcript.)

Also a map showing the location of the Hammond springs in connection with Mr. Cozens' testimony, showing that the Hammond springs *was* next to this Hammond tract and above six hundred feet east of it.

(Here follows diagram marked p. 362.)

363 Also the instructions of Mr. Cozens, showing that Mr. Cozens was authorized to survey the confirmed claims and nothing else. He had no right to be nosing around among the old squatters there.

Instructions to W. H. Cozens, May 9, '46.

SURVEYOR'S OFFICE, ST. LOUIS, *May 9th*, 1846.

SIR: You are hereby appointed and authorized to survey and connect with the adjacent surveys the confirmed private land claims below specified, or so many of them as can be located without interfering with field lots already surveyed in the names of other persons. The said claims are all situated in the Grand Prairie common field in the vicinity of St. Louis and in T. 45 N., R. 7 E., 5th p'l mr., viz:

1st.	Baptiste Riviere dit Bacane	1	by 40	arpents.
2nd.	Pierre Barribeau	1½	" 40	"
3rd.	Francis Bissonette	½	" 40	"
4th.	Auguste Chouteau, under Widow Bissonette	2	" 40	"
5th.	Samuel Bridge (same as John B. Ortez)	2	" 40	"
6th.	Auguste Conde	2	" 40	"
7th.	Francois Faustin dit Parent	1	" 40	"
8th.	Jeannette, free negro woman	1	" 40	"
9th.	Pierre Lacroix	2	" 40	"
10th.	Louis Laroche	1	" 40	"
11th.	Jacob Lasabloniere	1½	" 40	"
12th.	Frances Mareschal	½	" 40	"
13th.	Antoine Reynar	1	" 40	"
14th.	Claude Tinon	1½	" 40	"
15th.	Benito Vasquez	1	" 40	"
16th.	Louis Lacroix	1	by 40	"
17th.	Antoine Roy	1	" 40	"
18th.	Jean Baptiste Hervieux	2	" 40	"
19th.	William or Guillame Bizet	1	" 40	"

I herewith enclose the following-described papers, lettered from A to M, viz:

A. Your appointment as deputy surveyor.

B. A copy of the printed general instructions to deputy surveyor for surveying private claims.

C. A diagram of the Grande Prairie common field, so far as surveyed, with the adjacent surveys to the southward, eastward, and

westward thereof, with descriptions on said diagram of all the corners which you may have to run from or close on.

D. A transcript from the files and records of this office and that of the recorder of land titles of the confirmed and unconfirmed claims, beginning with that of Francis Dunnegan dit Beaurosier on the N. E. (already surveyed) and extending southwesterly so far as to include the unconfirmed claims of Barsoloux. These claims, it is believed, were originally connected with each other. There is, however, nothing of record to show the connection between Jacques and Antoine Marechal, Dehetze and Moreau, and Corneau & Berger.

E. A transcript from the files and records of this office and those of the recorder of the land titles of Grande Prairie claims which cannot be located without further proof as to their localities.

F. A diagram of confirmed and unconfirmed claims in the Grande Prairie, of which that of Ignace Laroche is the most northern and Barsaloux's is the most southern. This is copied from a diagram left at this office by L. A. Benoist, and is believed to have been obtained from Colonel Paul's office.

G. An abstract of Duralde's notes of his surveys of the claims of Alexis Picart and Joseph Mainville dit Dechenes, which accounts for what is commonly called the "offset" in the Grande Prairie fields.

H. The depositions of Baptiste Riviere and René Dodier in relation to the localities of the several Grande Prairie and Cul-de-sac field lots, lying southwesterly of the said Riviere claim in the Grande Prairie.

I. A list of unconfirmed field lots in the Grande Prairie.

364 K. A transcript from the recorder's office of the proceedings of the last board of commissioners in the case of Guillaume Bizet, claiming 1 by 40 arpents, which was confirmed by the act of Congress of the 4th of July, 1836, under decision No. 286.

L. A copy of so much of the acts of Congress of the 13th of June, 1812, and 26th May, 1824, as may be of use to you.

M. The deposition of Rene Paul as to the locality of the claim of Baptiste dit Bacane.

In the execution of the surveys of the claims before mentioned you will in all cases be governed by the general instructions marked B, except only where they may conflict with the following special instructions, viz:

1st. Trace one or more of the lines of the Grand Prairie field lots (already run) which can be properly identified, and at the variation you find your compass to follow such line or lines all your surveys are to be made.

2d. All the long or side lines of the lots are to be parallel to the southwest boundary of survey No. 3285 in the name of Dunnegan, and the end lines are to be continuations of the S. eastern and N. western boundaries of surveys No. 1296, 1461, 3303, 3304, 1561, 1583, and 3285, except you are obliged to vary a little, so as to have exactly 40 arpents between said end lines, and also except you find that another offset was made to the northwestward in the original

surveys, in which case you will report to this office and give your reasons for supposing such to be the fact.

3rd. It will be necessary to run the end lines of the intermediate unconfirmed claims, so as to keep up the connections between those that are confirmed, and for the purposes of putting the latter in their relative positions.

4th. The papers D & E show everything (as is believed) on the subject of the aforesaid claims that is to be found in this office or in that of the recorder of land titles, and as the information which they afford is by no means satisfactory in respect to some of the claims it is expected that the persons interested will afford you such additional proof as to the localities of their claims as it may be in their power to furnish.

5th. You are to respect only such evidence produced by the claimants as may be in writing and which ought to be filed in this office for future reference.

But in the case of deeds being presented, which, of course, will not be given up to you, you will state in your field book the substance of the same, by which you may be governed. Give the names of the parties, dates, and the books and pages where they are recorded.

6th. In case you should find it impossible to keep up a regular connection of the several tracts for want of proper data, and any one or more of the claimants should be able to prove the precise situation of his or their original improvements, you can survey such tract or tracts so as to include the improvements. The lines, however, are to be run as mentioned under the 2d head.

7th. You will observe that the width of several of the tracts on the list of unconfirmed claims (marked I) is not given. You will supply this deficiency, if possible, by the depositions of living witnesses or such other testimony as may be indisputable.

8th. Such claims on the list marked D as you may find to have been already surveyed by Jos. C. Brown under other names you will have nothing to do with, nor are you to survey any claims where their localities are doubtful.

9th. As the lands are very valuable on account of their proximity to the city of St. Louis, your surveys may give rise to a good deal of litigation unless the greatest possible care be taken to put each claim in its proper place. It is therefore hoped that you will not suffer yourself to be biased by any one, but to act in your capacity as deputy surveyor without fear, favor, or affection.

10th. Instead of noting your surveys in the order in which the work is done on the ground, as prescribed in the general instructions, you are at liberty first to make rough minutes on the ground, from which make out a fair set of notes in a book to be kept for that purpose, so that the notes of each survey may be complete without having to refer to the notes of another survey.

11th. All papers herewith furnished you (except your commission), together with such written evidence in relation to the aforesaid claims as may come into your possession, are to be returned, with your field-notes of surveys, to this office.

Three months from the date hereof are allowed for making your returns to this office, when, if your surveys shall be approved by the surveyor of public lands in the States of Illinois & Mis-
365 souri, you will be paid on account of the United States at the rate of six dollars per mile for the lines of the surveys, as well as their connections, under the appropriation made for the surveys of towns & villages in Missouri, except in the case of Guillame Bizet, for which you will be paid, under the appropriation for the survey of private claims confirmed by the act of 4th July, 1836, at the rate of five dollars per mile for the lines of the survey and connections.

I am, very respectfully, sir, your obedient servant,

F. R. CONWAY,
Surv. Gen'l.

William H. Cozens, Esqr., deputy surveyor, present.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct transcript of a copy of a letter from F. R. Conway, surveyor general, to William H. Cozens, deputy surveyor (the original not being on file in this office), as the same appears of record in Letter Book L, now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 26th day of May, 1879.

[SEAL.] JAS. E. McHENRY,
Register of Lands.

Also the instructions dated February 22d, 1855, in which he made some other surveys:

Instructions to W. H. Cozens, Feb. 22, '55.

OFFICE OF THE SURVEYOR GENERAL,
ST. LOUIS, 22*d February*, 1855.

SIR: You are hereby appointed to execute the following field work in the southern part of the Grande Prairie common field of St. Louis: 1st, to prolong the western line of the Grande Prairie from the southwest corner of survey No. 1276 (lot No. 1 of your location) southward to the south boundary of lot No. 14 of Guillame Bizet or his legal representatives, so as to make it a single straight line from the northwest corner of survey No. 1296, for Mainville dit Dechenes.

The east and west boundaries of surveys Nos. 1296, 1461, 3303, & 3304 in 1838, by Joseph C. Brown, bear N. 29° 30′ E. The east and west boundaries of surveys Nos. 1561, 1583, & 3285, subsequently executed by said Brown and L. M. Eiler, is N. 28° 45′ E. The discrepancy between those bearings may have arisen from a slight difference in the variation, or the ordinary causes producing such discrepancies, when surveys are made at different times. Your

whole eastern line bears N. 28° 45′ E., and so does your western line, except the western boundary of survey No. 1276, which runs N. 29° 5′ E. Should this latter course be prolonged south the west boundary of the Grande Prairie from Mainville's to Bizette's lot would not be a straight line, but two lines, the angle to which is the corner common to surveys Nos. 1276 & 3285. This is to be avoided.

2d. From the new western line run and fixed as aforesaid extended eastward lots No. 12, for Rondeau; No. 13, for Bacanne, and No. 14, for Guillame Bizet, so as to make their eastern boundaries a prolongation of the eastern line of the lots north thereof.

3d. Locate on lots No. 12, for Rondeau, and No. 13, for Becanne, the lot of two arpents confirmed to Vincent Bouis' representatives by the acts of 13th June, 1812, and 26th May, 1824.

4th. The side lines of many tracts are crossed by the small creeks made by the several springs of the locality. The distance of such intersections from a given corner not being stated in your former notes, it is necessary to repair the omission, and if there are any of the natural and permanent objects connected with your surveys, the locality of which has not heretofore been fixed in relation to the lines thereof, you will fix that locality by actual measurement. For instance, supposing that you are describing the south boundary of Laroche, state, "at — chains, a point from which the re-
366 mains of Marie house bears — at — chains across a branch running —;" but this instruction, I repeat, is only to be carried out where the connections have not already been made.

5th. From the Marie spring run a line N. 28° 45′ E. to the southern boundary of lot No. 14, for Bizet, and from the point where it intersects in run to the S. W. corner of that lot for connection.

6th. It is desirable that your measurement be taken in chains and links, and not in feet and inches.

7th. Connect all your intersections with the lines of established surveys to the nearest corner of said surveys where your new operations shall require it.

It is expected that you will attend to this work without delay.

Very respectfully, your ob't servant,

——— ———,

Surveyor General.

To Wm. H. Cozens, Esqr., deputy surveyor, St. Louis, Mo.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct transcript of a copy of a letter from sur. gen'l to Wm. H. Cozens, deputy surveyor, as the same appears of record in Letter Book "A" No. 1, now on file in this office.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed the seal of said office, at the city of Jefferson, this 28th day of May, 1879.

JAS. E. McHENRY,
Register of Lands.

Also map "X" showing a school survey, and showing that the schools had no interest outside of the boundary surveyed on map "X;" the school land is always inside that territory.

By Mr. REYNOLDS: We object to that map as not being an authentic map.

(Omitted by instructions as per stipulation.)

Also the proclamations of the President of the United States. It is stipulated that these proclamations may be read from the books without being copied into the record, both here and in the Supreme Court, showing as to the commencement and the end of the war.

The court adjourned to 10 a. m. to-morrow.

OCTOBER 22D, 1889—10 o'clock a. m.

By Mr. JEWETT: I offer in evidence map showing survey of the township dated the 19th day of February, 1879, by James E. McHenry, register of lands.

By Mr. REYNOLDS: I object, because it is not a complete map; it does not show the claims that are confirmed and unconfirmed.

By the COURT: I think the objection on the grounds stated
367 is not well taken. I will overrule the objection.

(Here follows diagram marked p. 368.)

369 OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI,
SAINT LOUIS, *December 11th*, 1854.

The above plat of township 45 & of parts of townships 44 & 46 north of the base line, range 7 east of the 5th principal meridian is strictly conformable to the field-notes of the surveys thereof on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the above and foregoing to be correct copies of the plat of surveys numbered 2620, 2692, 1561, 1583, 3285, 1276, 2712, 903, and 2500, together with the certificate of Jno. Loughborough thereto attached, as the same appear from a plat of township 45 north, range 7 east, now on file in this office.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 19th day of February, 1879.

JAS. E. McHENRY,
Register of Lands.

370 By Mr. JEWETT: We will put in also the Mossberger map, concerning which Mr. Cozens testified yesterday.

2 & 2500

st of 5th pl. Meridian.

Field

Also map "X" showing a school survey, and showing that the schools had no interest outside of the boundary surveyed on map "X;" the school land is always inside that territory.

By Mr. REYNOLDS: We object to that map as not being an authentic map.

(Omitted by instructions as per stipulation.)

Also the proclamations of the President of the United States. It is stipulated that these proclamations may be read from the books without being copied into the record, both here and in the Supreme Court, showing as to the commencement and the end of the war.

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By the COURT: I think the objection on the grounds stated
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[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 19th day of February, 1879.

JAS. E. McHENRY,
Register of Lands.

370 By Mr. JEWETT: We will put in also the Mossberger map, concerning which Mr. Cozens testified yesterday.

By Mr. REYNOLDS: I object because it was not made by virtue of authority of the Government or any officer authorized to make the same or by any surveyor or deputy surveyor of the Government.

By the COURT: I will sustain the objection to the map. I don't think it was properly authenticated.

This was all the testimony offered by either party.

The plaintiffs asked the court to give instructions, of which the following were given by the court:

Plaintiffs' Instructions Given.

2. The court is requested to declare the law to be—that the presumption is the law is—that a patent duly executed and issued by the United States Land Department, including the signature of the President, gives a fee-simple title to all the land covered by said patent and not exempted out of the same, and that the burthen is upon those who dispute such title to prove that the United States had no such titles at the time the patent was issued.

3. The court is requested to declare the law to be that the patent to Joseph Hunot or his legal representatives, dated August 30th, 1859, granting to said representatives the land surveyed by the United States Land Department as survey No. 2500, conveys to said representatives a valid title to the land within said survey not exempt out of it by the exceptions in said patent; and that no occupant of said land can set up a valid defense to one claiming under said patent unless he proves that he is in possession under or
371 by virtue of a prior grant by the Government of the particular piece or parcel of land so occupied by him.

6. The court declares the law to be that the judgment of the circuit court of St. Louis county in favor of Relf, Chew, and Clark against Hammond could have been legally executed by a writ of execution issued from said circuit court after the same had been affirmed by the supreme court.

16. If the court, as trier of the facts, finds from the evidence that both pl'ffs and def'ts claim under the location of what is known as New Madrid certificate No. 161, located by Rufus Easton, and surveyed as U. States survey 2500 in 1819, and returned to the recorder of said titles in 1833, then the court is requested to declare the law to be that neither party can dispute the legality of the proceedings up to and including said location.

17. The court is requested to declare the law to be, that if said Samuel Hammond had no title, legal or equitable to any land in United States survey number 2500, at the time of the levy and sale in September and October, 1823, by Sheriff Walker, on execution against said Hammond, then any title which the said Hammond or his heirs might afterwards acquire to any part of said survey by gift, grant, inheritance, or enurement would not pass to the purchasers under said execution sale by virtue of said execution sale.

19. The court is requested to declare the law to be that the legal and proper effect and meaning of the act of Congress of February

17th, 1815, commonly called the New Madrid act, is to confer on the owner of the New Madrid land at the date of the act the
372 right to make and the benefit of the New Madrid location under the provisions of said act, and that the title to the new location vested in such owner or those claiming under him. McCamant *vs.* Paterson, 39 Mo., 100.

20. The court is requested to declare the law to be that the documentary and other evidence put in by plaintiffs establishes a legal title in the plaintiffs as the legal representatives of Joseph Hunot, and the verdict must be for them, unless that title is defeated by evidence put in by defendants.

26. The court declares the law to be that if all the plaintiffs except J. L. D. Morrison are the lawful descendants of Samuel Hammond, to whom Rufus Easton conveyed said land in 1823, and further find that said Hammond's descendants, in whom this title was, were residents of the so-called Confederate States during the late war of the rebellion, then the time of the continuance of said war is no part of the ten years' time before the commencement of this suit necessary to give the defendants title by adverse possession, and that the States of South Carolina, Georgia, Alabama, and Tennessee were Confederate States, and the war in the three first-named States lasted from April 19th, 1861, to April 2d, 1866, and in the last-named State from August 16th, 1861, to April 2d, 1866, and that as the deeds to Morrison were dated since the close of the war, he is entitled to the same rights as the plaintiffs under whom he claims.

The "Protector," 12 Wallace, page 700.
Brown *vs.* Hyatt, 15 " " 183, '4, & '5.
Adger *vs.* Alston, 15 " " 560 & 561.

373 27. If the court, as trier of the facts, finds from the evidence in the case that the fee-simple or legal title to the land in dispute had not been out of the United States, either by patent or act of Congress, for the space of ten years last before the commencement of this suit, exclusive of the time of the continuance of the late civil war, then the court is requested to declare the law to be that the adverse possession of the defendants, and those under whom they claim, does not give them title by adverse possession and is no defence to this action.

31. If the court finds from the testimony that the patent introduced in evidence was "recorded" in the books of the Commissioner of the General Land Office before it had been signed by the President, then the court is requested to declare the law to be that the said patent did not become effective as a valid and completed patent by reason of such recording.

And the court refused to give the following:

Plaintiffs' Instructions Refused.

HAMMOND *et al.*
vs.
CONNECTICUT MUTUAL INS. CO.

1. If the court as trier of the facts finds from the evidence that the plaintiffs are the legal representatives of Joseph Hunot, to whom the United States patent, dated August 30th, 1859, *to* United States survey 2500, was issued and is in evidence; that said patent covers and includes the land in controversy in this suit; that said patent was issued after all the common-field lots, so called, had been surveyed by the order of the United States Land Department, and that no such survey covers any portion of the land in controversy in this suit; that the land department excepted out of said patent other surveys of said common-field lots located within the
374 outlines of said survey, then the court is requested to declare the law to be that said representatives have a valid title to said land, unless it is proved to this court by competent and lawful testimony that the United States had granted to some other person or persons prior to the issuing of said patents a title to the land here in controversy, and that the burthen of proofs to prove such grant is in this case upon those who claim under it.

4. The court is requested to declare the law to be that no part of what is known as Grand Prairie common fields of St. Louis were by the act of Congress dated June 13th, 1812, reserved for the use of the schools unless said land was and is within or east of what is known as the outboundary line, required by said act to be run and which was run by order of the United States about 1842.

5. The court is requested to declare the law to be that unless it appears from the evidence in the case that in that part of the territory known as the Grand Prairie common fields which is outside or westwardly of the line known as the outboundary line, run by order of the United States Land Department, there was no land or territory except such as was occupied, cultivated, or possessed as required by the act of Congress of June 13th, 1812, and that if there is no evidence in the case that this particular tract was so occupied, cultivated, or possessed as required by the act of Congress of June 13th, 1812, and that if there is no evidence in the case that this particular tract was so occupied, cultivated, or possessed before 1803, as required by said act, then the legal representatives of Joseph Hunot have a valid title to said land as against defendant in this case.

375 7. The court is requested to declare the law to be that no bond, if any such there was, made by Rufus Easton to Samuel Hammond and James J. Wilkinson in 1818, after said Easton had applied to the surveyor general of Mo. to have New Madrid certificate 161 located on what is now survey 2500, but before said survey was made on the face of the earth, could convey any legal or equitable title to any part of said proposed location such as

could be conveyed to a purchaser under an execution sale against said Hammond.

Rector *vs.* Ashley, 6 Wallace, U. S. Rep., 142.
Lessieur *vs.* Price, 12 Howard, U. S., 73, and following,

8. The court is requested to declare the law to be that under the evidence in the case as to the proceedings in locating New Madrid certificates No. 161 as covering the land known as United States survey 2500 there was no legal or equitable title to the land covered by said survey in Easton or Hammond that could be sold on execution under the laws of Mo. in October, 1823, so as to give to the purchaser under said execution sale the legal title that might afterwards pass out of the United States.

See cases named above and also Lindell *vs.* Cabanne, 12 Mo., 184.

9. The court is requested to declare the law to be that the reference in the deed, dated Sept., 1823, of Easton to Hammond, as put in evidence, to a bond given by him to Hammond and James J. Wilkinson does not sufficiently indicate and show the terms and conditions of said bond so as to make it appear that the terms and conditions of said bond were such as would convey to said Hammond and Wilkinson an equitable title to the land named in said bond to Hammond and Wilkinson or either of them such as
376 could be effectively levied on by execution as the property of either of them if the said Easton at the date of said bond had such equitable title.

Brant *vs.* Robinson. 16 Mo. R., p. 184, at end of opinion.
Lindell *vs.* Cabanne, 12 Mo., 184.

11. If the court, as trier of the facts, finds from the record evidence that in August, 1819, a judgment was rendered in favor of Richard Relf, Beverly Chew, and Mary Clark against Samuel Hammond in the circuit court, State of Missouri and county of St. Louis, for the sum of six thousand eight hundred and forty-one dollars eighty and one-half cents ($6,841.80½), and that afterwards, in due time, a writ of error in said cause was sued out of the supreme court of said State by Samuel Hammond, wherein said Hammond was pl'ff in error and said Relf and Chew and Clark were def'ts in error, and that said cause was by said writ taken to said supreme court, wherein it remained till the 22d day of May, 1823, and on which day said court rendered judgment as follows:

MAY 22, 1823.

SAMUEL HAMMOND *vs.* RELF, CHEW, and CLARK. } Error from St. Louis Circuit Court.

And now, at this day, come the parties aforesaid, by their respective att'ys aforesaid, and the court here, being sufficiently advised of and concerning the premises, considers that the judgment aforesaid, in form aforesaid rendered, be in all things and stand in full force

and effect, and it is further considered and adjudged by the court that the said Richard Relf, Beverly Chew, and Mary Clark recover against the said Samuel Hammond their costs and charges
377 by them about their defense in this behalf expended, and that they have thereof execution.

That afterwards and on the 28th day of May, 1823, an execution was issued by the clerk of the supreme court in favor of said Relf, Chew, and Clark against said Hammond, which execution recites that said Relf, Chew, and Clark had in the supreme court recovered a judgment against said Hammond for the sum of $6,877.43½ *cents*, which to the said Relf, Chew, and Clark was adjudged for their damages which they sustained by reason of the non-performing certain promises, &c.; that the costs taxed on said execution amounted to the sum of $39.63; that the sheriff by virtue of said execution sold first to the execution creditors a piece of land of the def't Hammond for the sum of sixty dollars, and that he next sold on said execution the 240 acres, north part of said survey 2500, covering the land here in dispute, for the sum of one hundred dollars, and afterwards other pieces of land belonging to said Hammond, and that by his return made on said execution it appears that all the costs, including court and sheriff's costs, amounted only to about $52.53, and that all of said sales were made to Relf and Chew, execution creditors.

Then the court is requested to declare the law to be that said execution was utterly void as to the debt named in said execution, as there was no judgment for debt, and that said execution was good only for costs, and that all sales under it after the first piece, which is shown to have sold for enough to pay all costs, were utterly void as to the execution creditors purchasing at said sale, and that said sales were void as to purchasers who purchased under a deed purporting to convey only such title as Relf and Chew got
378 under said sheriff's sale; also it is void as to any heir of such purchaser who claims the title only as nephew or niece of such purchaser, and also void as to any one buying of such nephew or niece after suit in ejectment was brought by the heirs of Hammond against such nephew or niece to recover said land or buying under a quitclaim deed for a nominal sum while said land was in litigation on account of said execution sale and contesting its validity.

12. The court is requested to declare the law to be that upon all the record evidence in the case as to the judgment in the circuit and supreme court- in favor of Relf, Chew, and Mary Clark *vs.* Samuel Hammond and the execution in the same and the sales thereunder by the sheriff, Walker, to said Relf and Chew and the return of the sheriff thereon and recitals in the deed of the sheriff to said Relf and Chew—

That the sale of the 240 acres of land in said survey 2500, under said execution, was wholly null and void and may be attacked collaterally in an action where title is claimed, as in this case, under said sale.

13. The court is requested to declare the law to be that under

and by virtue of the record evidence in the case no legal or equitable title to the land in dispute passed from Rufus Easton to Samuel Hammond on or before the 8th day of October, 1823.

14. The court is requested to declare the law to be that the reference of Rufus Easton in his deed of said land to Samuel Hammond, dated Sept. 29th, 1823, and acknowledged Oct. 9th, 1823, to a certain bond by said Easton to Hammond and Wilkinson,
379 dated in 1818, is not sufficiently definite, certain, and particular to show that any equitable title to the land, if said Easton had any, was so conveyed or given by said bond to Hammond as was attachable or subject to sale on execution by and under the then laws of Missouri.

Brant *vs.* Robinson, 16 Mo., 134, at the end of the opinion; also Lindell *vs.* Cabanne, 12 Mo., 184.

15. The court is requested to declare the law to be that upon all the documentary evidence put into the case by both sides upon the subject of the making out, recording, signing, passing upon, and issuing the patent by the land department, at Washington, to Joseph Hunot or his legal representatives, the said patent was not operative to take the fee to the land covered by it out of the United States till Nov. 12th, 1860.

16. That unless the court, as trier of the facts, finds from the evidence that the patent to "Joseph Hunot or his legal representatives," put in evidence, was fully prepared by the officers of the land department, including the Secretary of the Interior, and signed by the President, and ready to be delivered as a duly executed patent before the 12th day of November, 1860, the day on which the opinion of the said Secretary, as put in evidence, is dated, and said patent ordered to be delivered, then the court is requested to declare the law to be that said patent was not operative to take the fee to said land out of the United States till said 12th of November, 1860.

18. If the court, as trier of the facts, finds from the evidence that the judgment against Hammond, put in evidence, was rendered in May, 1823, and that no deed was made to Hammond by
380 Easton of the land in dispute till September and October, 1823, then the court is requested to declare the law to be that there is no evidence in the case that Hammond had in May, 1823, any such interest in said land as could be sold on execution, and that only such interest as he had at the time of the rendition of said judgment could be sold on execution issued on the same.

Terr. Laws, vol. 1, p. 120; also see 61 of same, p. 855.

21. The court is requested to declare the law to be that under all the documentary evidence put in this case there was in 1823 no legal or equitable title in Samuel Hammond to any part of the land in what is now known as United States survey No. 2500, in the city of St. Louis, and for that reason (having no reference to any other) no title, legal or equitable, to any part of said land was acquired by the purchasers under the levy and sale by Sheriff Walker, on execution against said Hammond, in September and October, 1823, as put in evidence in this case.

22. The court is requested to declare the law to be that the sheriff's deed in this case cannot be aided in its description of the land and by any presumption as to what the sheriff's deed intended to convey, and that the description in the sheriff's deed in this case cannot be varied or aided by parole testimony any further than to show that the description in the sheriff's advertisement did apply to the land claimed under his deed and well known in the neighborhood by the description in the advertisement, and that if the description in the advertisement is not sufficient to designate the land to be sold, then the sale is void.

23. The court is requested to declare the law to be that
381 the statute law in force in this State in 1823 required that the land to be sold by a sheriff on execution should be advertised for twenty days before the day of sale; that the description in the advertisement is the only description by which the land can be sold, and if the description in the advertisement of Sheriff Walker as to the land here in controversy was so vague and uncertain that the neighbors could not well know where the land was, then the said sheriff's deed in this case is void for uncertainty, and that the insertion by Sheriff Walker in his deed of additional particulars of description not in his advertisement cannot be considered as aiding the description in the advertisement.

24. The court is requested to declare the law to be that upon all the evidence in the case as to the land of Samuel Hammond claimed to have been sold in United States survey 2500 by Sheriff Walker on the 8th of October, 1823, on execution in favor of Relfe and Chew and Mary Clark the description by the sheriff in his advertisement was so vague and uncertain that it cannot be held to have covered the north 240 acres of the land in United States survey 2500, surveyed to Joseph Hunot or his legal representatives.

25. The court is requested to declare the law to be that the deed from the public schools of St. Louis to Peter Lindell of the land in United States survey No. 2500 conveyed to said Lindell no title to said survey.

Vide Kissell *vs.* School, 18 Howard, 19.
Papin *vs.* Ryan & Walker, 32 Mo., 21.

28. The court is requested to declare the law to be that, as it appears by record evidence not disputed, *that* the deed of Rufus Easton and wife to Samuel Hammond of the 240 acres in United
382 States survey 2500, in dispute, though dated on the 29th day of September, 1823, was not acknowledged until October 9, 1823, and as there is no evidence as to when said deed was delivered the presumption of law is that said deed was not delivered till it was acknowledged by said Easton and wife, and therefore no title or interest in said land passed by said deed from said Easton to said Hammond that could be sold on execution on the 8th day of October, 1823.

29. If the court, as trier of the facts, finds from the evidence that, as to the land to be sold by Sheriff Walker on the 8th of October, 1823, on execution in favor of Relf, Chew and Clark against Samuel

Hammond, the description in the advertisement is careful and exact and covers the land which constitutes the south part of United States survey No. 2500, calling with distinctness for a south boundary, which line is in fact the south boundary of said survey, and that the quantity of land called for in said advertisement (viz., 240 acres), when surveyed and measured in accordance with the boundaries given, will not include the land in controversy in this suit, then the court is requested to declare the law to be that the sale under said execution passed no title to the land in controversy in this suit to the purchaser.

30. If the court, as trier of the facts, finds from the evidence that the Hammond house and Hammond spring are not upon nor very near to survey No. 2500, and that their place on the face of the earth is about as near to the south half of said survey as to the north half, then the court is requested to declare the law to be that the description of land in a sheriff's deed which falsely states
383 that the said Hammond spring is included in the land sold will not be aided thereby in determining whether the north or south half or any portion of any particular survey was sold.

32. If the court, as trier of the facts, finds from the evidence that the patent put in evidence was dated and recorded before it was sent to the President to be signed by him, and that there is no sufficient evidence in the case to prove satisfactorily on what day the President did sign it, then the court is requested to declare the law to be that said patent did not take effect till so signed, and if there is no legal and competent evidence to prove on or before what day it was so signed it would not take effect till the propriety and legality of its issue had been passed upon by the Secretary of the Interior, as appears by all the evidence in the case on the subject on the 12th of November, 1860.

To which refusal of the court the plaintiffs at the time excepted.

The defendant asked the court to give the following instructions, which were given by the court:

Defendant's Instructions Given.

First. The title on which plaintiffs must recover, if they recover at all, is that which was vested in Joseph Hunot or his legal representatives either by the patent of the United States, dated August 30th, 1859, conveying to them survey No. 2500, with certain reservations and exceptions therein specified, or by the act of Congress of June 30th, 1864, by which the United States relinquished its right, title, and interest in and to said survey No. 2500 to Joseph Hunot or his legal representatives.

384 Second. The title under which plaintiffs claim is founded upon the deed of conveyance made by Rufus Easton to Samuel Hammond, dated September 29, 1823, by which he sold and transferred to said Hammond a part of the New Madrid location, made by said Easton as the representative of Joseph Hunot, it being admitted that the lot in dispute is covered by the land described in said deed; but the court declares it to be the law of this case that

whatever of right, title, or interest in said land was acquired by Samuel Hammond under the said deed of Easton to him was divested from Hammond and his heirs and transferred to Richard Relfe and Beverly Chew by the deed of John K. Walker, sheriff of St. Louis county, dated Nov. 4th, 1823.

Third. The description of the land as conveyed in sheriff's deed, taken in connection with the evidence adduced, tending to identify it as the land of Samuel Hammond so conveyed by Easton in the New Madrid location of Joseph Hunot or his legal representatives, together with the subsequent admission of Hammond in 1826 that he had no interest in said land, is sufficiently definite and certain to pass the interest of Hammond in said land to the purchasers, Relfe and Chew, the grantees in the said sheriff's deed.

Fourth. If the deed of conveyance from Joseph Hunot to Joseph Vendenbenden, made in 1810, for the old Spanish concession in the district of New Madrid, and the deed of Vandenbenden to Rufus Easton for the same land, made in 1815, followed by the confirmation of said concession or grant in 1816, the application to exchange said land under the act of 1815, the issue of New Madrid certificate No. 161, the application of Easton to locate said certificate on
385 the land in dispute, the survey of said land and return thereof in 1819, the transmission of said survey to the recorder of land titles in January, 1833, the approval and record of said survey by the recorder in February, 1833, the issue of a patent certificate by said recorder for said survey, and the issue of the patent by the United States, dated August 30th, 1859, were sufficient in law to vest the legal title to the land in controversy in Samuel Hammond as the legal representative of Joseph Hunot, then such legal title enured to the said Relf and Chew as the assignees of said Hammond under the judgment, execution, sale, and sheriff's deed read in evidence by defendants.

Fifth. If the court, sitting as a jury, finds from the evidence in the case that all the land in controversy was inhabited, cultivated, or possessed as common field lots of the Grand Prairie common fields of St. Louis by any one inhabitant of or by several different inhabitants of the town of St. Louis prior to the 20th day of December, 1803, said inhabitants each inhabiting, cultivating, or possessing one or more lots thereof for himself; that such lots were in regular succession adjoining each other on the sides and all having uniform and straight front and uniform east and west lines, then the plaintiff cannot recover, provided the court, sitting as a jury, shall further find that the land sued for clearly lies within and constitutes a part of the land so inhabited, cultivated, or possessed as the Grand Prairie common fields of St. Louis.

Sixth. If the court, sitting as a jury, believes from the evidence in the case that the land in controversy lies wholly within the limits of what was known in Spanish times as the Grand Prairie common fields of St. Louis, and that said common fields
386 consisted of divers and several lots of land lying contiguous to and adjoining each other with uniform boundaries and constituting all together a solid block of lots, and that said lots were

all inhabited, cultivated, or possessed by one or more of the inhabitants of the town of St. Louis prior to the 20th day of December, 1803, then the plaintiff- cannot recover, provided the court shall further believe that the lots so inhabited, cultivated, or possessed constituted a part of what was prior to December 20th, 1803, and up to the 13th day of June, 1812, known and recognized as the Grand Prairie common fields of St. Louis; and, provided further, the court finds that all the land in controversy lies within the limits of said Grand Prairie common fields and within the lots so inhabited, cultivated, or possessed prior to December 20th, 1803, as a part of said common fields.

To which action by the court the plaintiffs at the *the* time excepted.

Afterwards and on the 6th day of January, 1890, the court rendered judgment for the defendants.

To which action by the court the plaintiffs at the time excepted.

Afterwards and within four days, on the 10th day of January, 1890, the plaintiffs filed the following motion for a new trial:

Motion for New Trial.

In the Circuit Court of the City of St. Louis, at December Term, 1889, Room 5.

387 DAVID L. HAMMOND *et al.*, Pl'ffs, *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Def't. } 30080.

Now come the plaintiffs in the above-entitled cause and move this court to set aside the judgment heretofore rendered against them and to grant them a new trial therein, and assign therefor the following reasons:

1. The judgment is against the law.
2. The judgment is against the evidence.
3. The judgment is against the weight of the evidence.
4. The judgment is against the law and the evidence and the law under the evidence.
5. The court admitted improper and illegal evidence offered by the defendant.
6. The court excluded proper and legal evidence offered by the plaintiffs.
7. The court gave improper and erroneous instructions at the request of defendant.
8. The court refused to give proper instructions which were asked for by the plaintiffs.
9. The court gave improper and erroneous instructions of its own motion.
10. The court erred in rendering a judgment for the defendant when it should have been in favor of the plaintiffs.

11. The court erred in rendering a judgment inconsistent with and at variance with the instructions given in the case.

D. T. JEWETT AND
HENRY H. DENISON,
Att'ys for Plaintiffs.

388 Which said motion for a new trial was afterwards, on the seventh day of April, 1890, at the April term of the court, overruled.

To which action by the court the plaintiffs at the time excepted.

Afterwards, on the 31st day of May, 1890, at the same term of court, the plaintiffs filed the following affidavit for an appeal:

Affidavit for Appeal.

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Circuit Court, City of St. Louis, April Term, 1890.

DAVID L. HAMMOND *et al.*
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Affidavit for appeal.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Edward C. Smith, being duly sworn, makes oath and says that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

EDWARD C. SMITH.

Subscribed and sworn to before me this thirty-first day of May, A. D. 1890.

PHILIP H. ZEPP, *Clerk.*

And thereupon, on the same day, the court allowed the plaintiff an appeal to the supreme court and made an order giving the plaintiffs until June 18th, 1890, to present their bill of ex-
389 ceptions.

Wherefore the plaintiffs now, on this 18th day of June, 1890, present this their bill of exceptions and pray that the same may be signed and made part of the record herein, which is done.

Witness the hand and seal of the Hon. Leroy B. Valliant, judge of the said court, the day and year last above written.

LEROY B. VALLIANT, *Judge, &c.* [SEAL.]

Certificate.

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, Philip H. Zepp, clerk of the circuit court, city of St. Louis, do hereby certify the foregoing to be a true, full, and complete transcript of the record and procedings in the above-entitled cause as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto set my hand and affix
[SEAL.] the seal of said court, at office, if the city of St. Louis, this 7th day of August, 1890.

PHILIP H. ZEPP, *Clerk.*

390 And afterwards, to wit, on the 9th day of March, 1891, the following further proceedings were had in the supreme court of the State of Missouri in said cause, viz:

D. L. HAMMOND *et al.*, App.,
v.
CONN. MUT. LIFE INS. CO., Resp.

Come now the said respondents, by attorney, and file their motion that these causes may he argued together; comes now the said appellants, by attorney, and file their motion to continue these causes until the Supreme Court of the United States shall have rendered its decision in the case of Hammond *et al. vs.* Johnson, receiver; comes also the said respondents, by attorney, and file their suggestions in opposition to the motion to continue filed herein.

Which said motion to argue these causes together is in words and figures as follows, to wit:

D. T. Jewett, Esq., attorney of record in the supreme court of Missouri:

Please take notice that I will file a motion in the supreme court of Missouri on the 9th day of March, A. D. 1891, of which I hand you herewith a true copy.

JAS. M. LEWIS,
Attorney for Petitioners.

STATE OE MISSOURI, }
City of St. Louis. }

391 I hereby acknowledge to have received a copy of the within motion on this 5th day of March, A. D. 1891.

D. T. JEWETT,
Attorney for Hammond Heirs and Others.

Now, at this day, come your petitioners, Jno. C. H. Block, Mary A. E. Gordon, Academy of Christian Brothers, John T. Davis, The Connecticut Mutual Life Insurance Company, H. H. Honore, Hugh

Campbell, and others, and respectfully represent to the court that there is depending and set for hearing in this court on the 15th day of April, 1891, two cases entitled—

JOHN C. BLOCK *et al.*, Respondents,
vs
JAMES L. D. MORRISON *et al.*, Appellants. } (No. 4925.)

&

DAVID L. HAMMOND *et al.*, Appellants,
vs.
MARY A. E. GORDON *et al.*, Respondents. } (No. 4926.)

That there is also depending in this court and set for hearing on the 25th of April, A. D. 1891, the following-entitled cause:

JOHN T. DAVIS, Respondent,
vs.
E. C. SMITH *et al.*, Appellants. } (No. 5561.)

That there is also depending in this court two other causes entitled as follows:

DAVID L. HAMMOND *et al.*, Appellants,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO. } (No. 5566.)

392 DAVID L. HAMMOND *et al.*, Appellants,
vs.
H. H. HONORE *et al.*, Respondents. } (No. 5568.)

which have been pending since June 15th, 1874.

That each and all of said causes involve the title to real estate, being in United States survey No. 2500 and situated in the western portion of the city of St. Louis, and each and all of said causes involve the same questions of law and fact.

The title of defendants in said cases, to wit:

David L. Hammond *et al. vs.* Mary A. E. Gordon *et al.*

David L. Hammond *et al. vs.* Connecticut Mutual Life Ins. Company.

David L. Hammond *et al. vs.* H. H. Honore *et al.*,

being precisely the same title as that of the plaintiffs in said cases No. 4925 and 5061, to wit:

John C. H. D. Block *et al. vs.* Morrison *et al.*

John T. Davis *vs.* E. C. Smith *et al.*

Your petitioners state that the property involved in said causes is of great value, and that your petitioners have paid and are paying taxes upon the same and adversary parties to your petitioners have not paid and are not paying taxes on any portion of said real estate, not even that portion thereof of which they have possession; that it will save time for both this court and counsel to set all of said causes for hearing at one time and date.

That the same counsel appear for each of your petitioners and the same counsel appear for each and all of said advers-y parties to your petitioners.

Wherefore your petitioners pray that said causes may all
393 be set down for hearing on the same day and may be heard at one time, and your petitioners would respectfully suggest that all the cases hereinbefore named be set down for hearing on Wednesday, April 15th, 1891 (on which day said cases Nos. 4925 and 4926 are set for hearing), or so soon thereafter as may suit the convenience of the court.

Respectfully submitted.

REYNOLDS & LEWIS,
Attorneys for Petitioners.

Which said motion for an order to continue these causes is in words and figures following, to wit:

In the Supreme Court of the State of Missouri.

J. C. H. D. BLOCK *et al.*, Respondents, *vs.* J. L. D. MORRISON *et al.*, Appellants.	No. 4925.
DAVID L. HAMMOND *et al.*, Appellants, *vs.* MARY A. E. GORDON *et al.*, Respondents.	No. 4926.
JOHN T. DAVIS, Respondent, *vs.* E. C. SMITH *et al.*, Appellants.	No. 5061.
DAVID L. HAMMOND *et al.* *vs.* THE CONNECTICUT MUTUAL LIFE INS. CO., Respondent.	No. 5566.
DAVID L. HAMMOND *et al.*, Appellants, 394 *vs.* H. H. HONORE *et al.*, Respondents.	No. 5568.

Now come the appellants in each and every of the above-entitled causes and move this honorable court that the setting of certain of said causes for hearing on the 15th and 25th of April next may be set aside, and the same be ordered to be continued, and that an order may be entered in each of said causes that neither of the same shall be again set down for hearing until after the Supreme Court of the United States shall have decided the case of Hammond *et al.* *v.* Johnston, receiver, now pending therein, and assign therefor the following reasons, to wit:

1. That the case of Hammond *et al.* *v.* Johnston, receiver, decided by this court and reported in 93 Mo., 198, now pending in the Supreme Court of the United States, involves the same questions of law and fact in controversy in the above-entitled causes, and that the decision of the Johnston case by the Supreme Court of the

United States will necessarily be decisive of the above-entitled causes, and will undoubtedly make a hearing of the same unnecessary in this court.

2. That a hearing and decision of each of the above-entitled causes in this court at the present time would necessarily cause the losing parties to sue out five writs of error in the United States Supreme Court, to incur heavy costs and expenses for an immense record in each case, and for the perfecting the entry of the same in the United States Supreme Court, all of which would be useless, oppressive, and unnecessary, and would not hasten the final decision of the questions involved in the above-entitled causes.

3. That the case of Hammond *et al. v.* Johnston, receiver,
395 now pending, as above, in the United States Supreme Court, is No. 453 of the docket of that court of the present October term; that this case will undoubtedly be reached and decided during the next term of said court, as more than two hundred cases have already been reached at the present term.

4. That even if the above-entitled causes should be heard and decided by this court and taken by writs of error to the United States Supreme Court, they would never be heard therein, as respondents well know, for the decision of the said court in the case of Hammond *et al. v.* Johnston, receiver, now pending therein, as above, will decide the questions of law and fact involved in these five cases at least three years before they could possibly be reached in that tribunal, and so make the idea of a hearing in these cases in that court impossible and absurd.

5. An inspection of the records in the above-entitled causes will show to the court that, although they have been pending for a long time, they were never tried in the circuit court until after this hon. court rendered its decision in the case of Hammond *et al. v.* Johnston, receiver, *supra*, and that since that decision and the removal of said cause to the United States Supreme Court, although the final decision by the United States Supreme Court would settle the questions of law and fact in the above-entitled causes and render a trial of them unnecessary, these appellants have been needlessly and oppressively forced into trials of the same in the circuit court, and have been compelled at great cost, labor, and expense to prosecute their appeal to this court.

6. That the hearing and decision of the above-entitled causes by this court and writs of error to the United States Supreme
396 Court would not hasten for one day the final decision of the questions involved therein or result in any good to any party, and could only cause the losing party to incur heavy outlays in costs and expenses.

7. That at the February call the counsel for appellants understood the court to announce from the bench that the above-entitled cause should be continued until the decision of the case of Hammond *et al. v.* Johnston by the United States Supreme Court.

8. Because it would appear that the only motive respondents can have in insisting upon having the above-entitled causes heard at once by this court is that, assuming that this court will sustain its

finding in the case of Hammond *et al. v.* Johnston, receiver, these appellants will be obliged to assume the heavy burdens of taking all the cases to the United States Supreme Court in order to save their rights.

D. T. JEWETT AND
HENRY H. DENISON,
Att'ys for Appellants.

Service of the above motion is hereby accepted.
REYNOLDS & LEWIS,
Att'ys for Respondents.

Which said suggestions in opposition to the motion for continuance filed herein are in words and figures as follows:

To the hon. supreme court in and for the State of Missouri, October term, 1890:

The undersigned have been notified that the attorneys for the respondents in five cases, viz., Nos. 4925, 4926, 5061, 5566, and
397 5568, have filed their motion in this court to have the said causes set down *to* hearing on the same day and that day to be the 15th of April, 1891.

It is true, as said attorneys allege, that all those cases involve substantially the same questions of law and facts, and all relate to the title of United States survey No. 2500, made for Joseph Hunot or his legal representatives. But the undersigned further say that the cause of Hammond *et als. vs.* Johnston *et al.*, decided by this court and reported in the 93rd volume of the Missouri Reports, page 198, and now pending in the United States Supreme Court, also involves the same questions of law and fact, and that the questions made in that case for the decision of the United States Supreme Court must necessarily be fatal to one side or the other in all the above-named cases now pending in this court; that said Johnston case is number 453 of the docket of the October term, 1890, of the United States Supreme Court, and as number 185 has already been reached this number, 453, will undoubtedly be reached and decided some time in the next term of said court; that a decision now by this court of the five cases named in respondents' petition would necessarily cause one side or the other to sue out five writs of error to the United States Supreme Court, and thus impose heavy expenses for an immense record in each case on the losing party, which would be very oppressive and wholly unnecessary, and would not hasten the final decisions of the questions now pending in these five cases.

It is true that some of these five cases have been pending for some time, but the respondents in all of said cases were perfectly willing to wait as long as the decisions in other cases involving the same questions were going against them; but as soon as this court decided the Johnston case adversely to the Hammond
398 title the respondents immediately insisted upon trials in all other cases pending, apparently in hopes to crush out the

supporters of the Hammond title by forcing upon them expensive litigation.

So far they have not succeeded, if that was their motive, and probably will not. The granting of this motion would not hasten the final decision of these cases for one hour, as the decision of the Johnston case will, without doubt, settle the controversy. Neither party *are* really losing anything by delay in this litigation, for the land is now worth more than ten times what it was when the litigation commenced and, as is generally believed, is still rising in value. The petitioners in these cases represent three rich corporations and two very rich men, all of whom acquired their interests in the property for debts due them and can at any time have their debt and interest if they will release the property to those claiming the Hammond title.

Of the five suits the appellants are in possession of the land in only two, and for those two they are paying rent to the respondents.

A few days ago counsel for appellants were compelled to appear in court to resist a motion to dismiss these cases. At that time the court overruled the respondents' motion and, on appellants' motion, ordered these cases to be continued (as counsel understood the court) until the Johnston case should be decided by the United States Supreme Court. Counsel for appellants were surprised to find the cases again set for trial on April 15th, but supposed that the setting was unintentional.

The respondents have not shown any new or additional reasons why this motion should be entertained.

399 For these reasons and others apparent to the court the appellants earnestly object to the granting of the motion.

D. T. JEWETT AND
HENRY H. DENISON,
Att'ys for Appellants.

And afterwards, to wit, on the 23rd day of March, 1891, the following further proceedings were had in said cause, viz:

D. L. HAMMOND *et al.*, App.,
v.
CONN. MUT. LIFE INS. CO., Resp.

Now, at this day, the court, having fully considered and understood the motion heretofore filed for an order of continuance of these causes, doth order that these causes be continued until the further order of this court.

And afterwards, to wit, on the 12th day of January, 1892, the following further proceedings were had in said cause, viz:

D. L. HAMMOND *et al.*, App.,
v.
CONN. MUT. LIFE INS. CO., Resp.

Come now the said respondents, by attorney, and file their motions asking that these causes be set down for hearing.

Which said motion to set causes for hearing is in words and figures following, to wit:

In the Supreme Court of Missouri, —— Term, 1892.

400 JOHN C. H. D. BLOCK *et al.*, Respondents,
vs.
JAMES L. D. MORRISON *et al.*, Appellants. } No. 4925.

DAVID L. HAMMOND *et al.*, Appellants,
vs.
MARY A. E. GORDON *et al.*, *Appellants.* } No. 4926.

DAVID L. HAMMOND *et al.*, Appellants,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Respondents. } No. 5566.

JOHN T. DAVIS, Respondent,
vs.
D. T. JEWETT *et al.*, Appellants. } No. 5061.

DAVID L. HAMMOND *et al.*, Appellants,
vs.
H. H. HONORE *et al.*, Respondents. } No. 5568.

And now come your petitioners, by their counsel, and respectfully represent to the court that heretofore, to wit, the foregoing cases were set for hearing and continued from time to time till the cause of Hammond *vs.* Johnston, No. 114, in the Supreme Court of the United States was decided.

Your petitioners now state that the last-named case was decided by the Supreme Court of the United States on December 14th, and your petitioners herewith file certified copy of opinion in said cause of Hammond *vs.* Johnston and make it a part of this motion.

Your petitioners now come into court and ask that the foregoing described cases be set down for hearing at an early date as the court may deem proper in the premises.

J. M. LEWIS,
Counsel for Petitioners.

Service of copy of foregoing is hereby acknowledged this 11th day of January, A. D. 1892.

401 STATE OF MISSOURI, }
City of St. Louis. }

James M. Lewis on his oath, being duly sworn, says that he served a copy of the within motion on D. T. Jewett, counsel of record in the following cases, No. 4925, 4926, 5566, 5061, and 5568, on January 11th, 1892, and at the time of service he informed D. T. Jewett that he would call up the said motion in the supreme court

at Jefferson City, on Tuesday, January 12th, 1892, at one o'clock or — soon thereafter as hearing could be obtained.

JAMES M. LEWIS.

Subscribed and sworn to before me this 11th day of January, A. D. 1892.

[SEAL.] E. S. WARNER,
Notary Public.

Term expires Nov. 25, '93.

Supreme Court of the United States, October Term, 1891.

DAVID L. HAMMOND, CHARLES L. HAMMOND, MARY A. Kingman, EMMA W. Kingman, *et al.*, Plaintiffs in Error,
vs.
WALTER S. JOHNSTON, Receiver of the National Bank of the State of Missouri, and Cara A. Baker.

No. 114. In Error to the Supreme Court of the State of Missouri.

(December 14, 1891.)

Mr. Chief Justice FULLER delivered the opinion of the court:

This was an action of ejectment for a lot described brought in the circuit court of St. Louis county June 15, 1874.

The facts necessary to be considered in the disposition of the case are as follows: Joseph Hunot claimed a head-right of 800 arpents of
402 land under the Spanish government, dated in 1802, and located in what is now New Madrid county, Missouri. On May 12, 1810, he conveyed this land by warranty deed to Joseph Vandenbenden, and on November 4, 1815, Vandenbenden conveyed the same by a like deed to Rufus Easton. January 31, 1811, the claim was presented for confirmation to the old board of commissioners and rejected; but on November 1, 1815, Recorder Bates recommended the claim for 640 acres for confirmation, and it was confirmed by act of Congress of April 29, 1816 (3 Stat., 328). August 12, 1816, Recorder Bates issued a certificate, No. 161, stating that the tract had been materially injured by earthquakes, and that under the act of Congress of February 17, 1815. Joseph Hunot or his legal representatives (who had already received a certificate for 160 acres) were entitled to locate 480 acres of land on any of the public lands of the Territory of Missouri the sale of which was authorized by law. On June 16, 1818, Rufus Easton made application to the surveyor general to locate the said certificate on certain lands in township 45, range 7 east, being the same on which it was subsequently located. June 23, 1819, Joseph C. Brown, United States deputy surveyor, returned to the surveyor general's office a plat and description of the 480 acres surveyed for Joseph Hunot or his legal representatives. This survey, which was numbered 2500, was returned to the recorder of land titles on January 8, 1833, and on February 2, 1833, Frederick R. Conway, the recorder, issued and delivered to Peter Lindell patent certificate No. 404 for said survey in favor of Joseph

Hunot or his legal representatives. July 10, 1819, Rufus Easton and wife, by deed of that date, conveyed to William Stokes 234
403 acres of this survey, described particularly by metes and bounds. September 29, 1823, Rufus Easton, by deed of that date, acknowledged October 9, 1823, and recorded February 9, 1824, in which he recited that he had previously, on September 3, 1818, executed his bond to Samuel Hammond and James J. Wilkinson for the same land, conveyed to Samuel Hammond 240 acres, being the whole of the Hunot survey as located by Rufus Easton by virtue of certificate No. 161, except 234 acres of the tract, which he had conveyed to Stokes. The lot in question in this suit is part of the 240 acres. Samuel Hammond occupied, fenced, and cultivated this land between 1818 and 1823. In 1824 or 1825 he left St. Louis and went to South Carolina, where he continued to reside until 1842, when he died, leaving five children. On the 12th of March, 1819, Relfe, Chew, and Clark instituted suit against Samuel Hammond in the St. Louis circuit court, which resulted in a judgment against him for the sum of $6,841.80½, which judgment was finally affirmed by the then supreme court at the May term, 1823. An execution was issued on this judgment May 23, 1823, and delivered to the sheriff of St. Louis county, by virtue of which he levied upon the two hundred and forty acres as the property of Samuel Hammond, and, after advertisement, the land was sold by him October 8, 1823, to Relfe and Chew, who were the highest and best bidders for the same; whereupon the sheriff executed his deed to said purchasers in due form of law, dated November 4, 1823. This deed was duly acknowledged and recorded. The land was subsequently sold and conveyed by Relfe and Chew to Peter Lindell, to whom Joseph Hunot and wife had also conveyed. On August 30, 1859, on Lindell's application, a patent was issued by the United States and re-
404 corded in the General Land Office, conveying the said survey, with certain exceptions, to Joseph Hunot or his legal representatives. The patent, although dated August 30, 1859, was under consideration in the Department of the Interior until November 12, 1860, when the Secretary decided in favor of issuing it.

Plaintiffs in error derive their claim to the land as heirs of Samuel Hammond or through conveyances made in 1873 and 1874 by such heirs. The defendants Johnston and Baker claim title to the particular lot sued for under one of the heirs of Peter Lindell.

The trial of the action having resulted in a judgment for the defendants, the case was taken to the supreme court of Missouri on appeal, by which court the judgment of the circuit court was affirmed. The opinion will be found reported in 93 Mo., 198. Thereupon a writ of error was sued out from this court.

The errors assigned here are, first, that the supreme court erred in holding that Hammond had any title to the land in controversy which could be levied upon by the sheriff and sold upon execution against him, for the reason that the United States survey No. 2500, made under said certificate No. 161, was not returned to the recorder of land titles for the Territory of Missouri until January 8, 1833, and recorded February 2, 1833; second, that the court erred in

holding that the patent to Joseph Hunot or his legal representatives, dated August 30, 1859, though not delivered until 1860, took effect from its date, by which error it was claimed that Samuel E. Hammond, one of the original plaintiffs, who lived in Tennessee, was erroneously held to be barred.

405 The supreme court of Missouri considered in its opinion and overruled certain objections of plaintiffs to the deed of the sheriff under the execution in the suit of Relfe, Chew, and Clark *v.* Hammond. These objections were that only a certified copy of the deed was offered in evidence; that the deed was void for uncertainty of description; that at the time of sale under the execution Hammond had no interest in the land subject to sale, and that Easton had no interest in the property because the surveyor general had not at the date of Easton's deed to Hammond returned a plat of the survey to the recorder of land titles and did not do so until 1833.

Plaintiffs in error contended that at the time when Easton conveyed to Hammond and when the sheriff sold the land under the execution, the title to the land was in the United States. The court conceded that the legal title was in the United States, but held that there was an equitable interest in Easton and those claiming under him which was subject to sale under execution and that under the statutes of Missouri the sheriff's deed was effectual in passing to the purchaser all the estate and interest which the debtor had at the time of the judgment; and the court used this language: "Under the view we have taken of the sheriff's deed and the force and effect we have given to it the title is in the defendants and the judgment will be affirmed. This result as to the effect of the sheriff's deed rendered it unnecessary to pass upon the other questions presented by the record, but we have ruled upon them in order that there may be no embarrassment to either party in a review of this judgment in the Supreme Court of the United States."

406 It is well settled that where the supreme court of a State decides a Federal question in rendering a judgment and also decides against the plaintiff in error upon an independent ground not involving a Federal question and broad enough to maintain the judgment the writ of error will be dismissed without considering the Federal question. Hopkins *v.* McLure, 133 U. S., 380; Hale *v.* Akers, 132 U. S., 554; Henderson Bridge Company *v.* The City of Henderson, *ante*.

Tested by this rule, the writ of error must be dismissed, and it is so ordered.

True copy.

Test: JAMES H. McKENNEY, [SEAL.]
Clerk Supreme Court U. S.

And afterwards, to wit, on the 8th day of February, 1892, the following further proceedings were had in said cause, viz:

Hunot or his legal representatives. July 10, 1819, Rufus Easton and wife, by deed of that date, conveyed to William Stokes 234
403 acres of this survey, described particularly by metes and bounds. September 29, 1823, Rufus Easton, by deed of that date, acknowledged October 9, 1823, and recorded February 9, 1824, in which he recited that he had previously, on September 3, 1818, executed his bond to Samuel Hammond and James J. Wilkinson for the same land, conveyed to Samuel Hammond 240 acres, being the whole of the Hunot survey as located by Rufus Easton by virtue of certificate No. 161, except 234 acres of the tract, which he had conveyed to Stokes. The lot in question in this suit is part of the 240 acres. Samuel Hammond occupied, fenced, and cultivated this land between 1818 and 1823. In 1824 or 1825 he left St. Louis and went to South Carolina, where he continued to reside until 1842, when he died, leaving five children. On the 12th of March, 1819, Relfe, Chew, and Clark instituted suit against Samuel Hammond in the St. Louis circuit court, which resulted in a judgment against him for the sum of $6,841.80½, which judgment was finally affirmed by the then supreme court at the May term, 1823. An execution was issued on this judgment May 23, 1823, and delivered to the sheriff of St. Louis county, by virtue of which he levied upon the two hundred and forty acres as the property of Samuel Hammond, and, after advertisement, the land was sold by him October 8, 1823, to Relfe and Chew, who were the highest and best bidders for the same; whereupon the sheriff executed his deed to said purchasers in due form of law, dated November 4, 1823. This deed was duly acknowledged and recorded. The land was subsequently sold and conveyed by Relfe and Chew to Peter Lindell, to whom Joseph Hunot and wife had also conveyed. On August 30, 1859, on Lindell's application, a patent was issued by the United States and re-
404 corded in the General Land Office, conveying the said survey, with certain exceptions, to Joseph Hunot or his legal representatives. The patent, although dated August 30, 1859, was under consideration in the Department of the Interior until November 12, 1860, when the Secretary decided in favor of issuing it.

Plaintiffs in error derive their claim to the land as heirs of Samuel Hammond or through conveyances made in 1873 and 1874 by such heirs. The defendants Johnston and Baker claim title to the particular lot sued for under one of the heirs of Peter Lindell.

The trial of the action having resulted in a judgment for the defendants, the case was taken to the supreme court of Missouri on appeal, by which court the judgment of the circuit court was affirmed. The opinion will be found reported in 93 Mo., 198. Thereupon a writ of error was sued out from this court.

The errors assigned here are, first, that the supreme court erred in holding that Hammond had any title to the land in controversy which could be levied upon by the sheriff and sold upon execution against him, for the reason that the United States survey No. 2500, made under said certificate No. 161, was not returned to the recorder of land titles for the Territory of Missouri until January 8, 1833, and recorded February 2, 1833; second, that the court erred in

holding that the patent to Joseph Hunot or his legal representatives, dated August 30, 1859, though not delivered until 1860, took effect from its date, by which error it was claimed that Samuel E. Hammond, one of the original plaintiffs, who lived in Tennessee, was erroneously held to be barred.

The supreme court of Missouri considered in its opinion
405 and overruled certain objections of plaintiffs to the deed of the sheriff under the execution in the suit of Relfe, Chew, and Clark *v.* Hammond. These objections were that only a certified copy of the deed was offered in evidence; that the deed was void for uncertainty of description; that at the time of sale under the execution Hammond had no interest in the land subject to sale, and that Easton had no interest in the property because the surveyor general had not at the date of Easton's deed to Hammond returned a plat of the survey to the recorder of land titles and did not do so until 1833.

Plaintiffs in error contended that at the time when Easton conveyed to Hammond and when the sheriff sold the land under the execution, the title to the land was in the United States. The court conceded that the legal title was in the United States, but held that there was an equitable interest in Easton and those claiming under him which was subject to sale under execution and that under the statutes of Missouri the sheriff's deed was effectual in passing to the purchaser all the estate and interest which the debtor had at the time of the judgment; and the court used this language: "Under the view we have taken of the sheriff's deed and the force and effect we have given to it the title is in the defendants and the judgment will be affirmed. This result as to the effect of the sheriff's deed rendered it unnecessary to pass upon the other questions presented by the record, but we have ruled upon them in order that there may be no embarrassment to either party in a review of this judgment in the Supreme Court of the United States."

It is well settled that where the supreme court of a State
406 decides a Federal question in rendering a judgment and also decides against the plaintiff in error upon an independent ground not involving a Federal question and broad enough to maintain the judgment the writ of error will be dismissed without considering the Federal question. Hopkins *v.* McLure, 133 U. S., 380; Hale *v.* Akers, 132 U. S., 554; Henderson Bridge Company *v.* The City of Henderson, *ante*.

Tested by this rule, the writ of error must be dismissed, and it is so ordered.

True copy.

Test: JAMES H. McKENNEY, [SEAL.]
Clerk Supreme Court U. S.

And afterwards, to wit, on the 8th day of February, 1892, the following further proceedings were had in said cause, viz:

D. L. HAMMOND *et al.*, App.,
v.
CONN. MUT. LIFE INS. CO., Resp.

Now, at this day, the court, having fully considered and understood the motion heretofore filed to set these causes for hearing, doth order that said motion be, and the same is hereby, granted, and that these causes be set for hearing, at the foot of the April term docket, before division No. 1.

And afterwards, to wit, on the 29th day of April, 1892, the following further proceedings were had in said cause, viz:

407 D. L. HAMMOND *et al.*, App.,
v.
CONN. MUT. LIFE INS. CO., Resp.

Come now the said parties, by attorneys, and after argument herein submit these causes to the court.

And afterwards, to wit. on the 31st day of October, 1892, the following further proceedings were had in said cause, viz:

DAVID L. HAMMOND, SARAH G. HAMMOND, CHARLES L. HAMmond, Sarah E. Hammond, Mary A. Washington, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, William F. Barsh and Augusta C. Barsh, His Wife; Thomas M. Price and Catharine C. Price, His Wife; Joseph S. McKie and Anna W. McKie, His Wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura Virginia Briquet, by Curator, E. H. Hesse; Edward C. Smith and Julia A. Morrison, Mary E. Carr and Joseph P. Carr, Her Husband; Virginia A. Morrison, Adele Kelly and Albert T. Kelly, Her Husband, Heirs of James L. D. Morrison, Deceased, Appellants,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Respondents.

Appeal from circuit court, city of St. Louis.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said circuit court of the city of St. Louis rendered be in all things affirmed and stand in full force and effect, and that the said respond-
408 ent recover against the said appellants its costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures following, to wit:

In the Supreme Court of Missouri, Division No. 1, October Term, 1892.

JOHN T. DAVIS, Respondent,
vs.
SMITH *et al.*, Appellants. } No. 5081.

DAVID L. HAMMOND *et al.*, Appellants,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO., Respondent. } No. 5566.

DAVID I. HAMMOND *et al.*, Appellants,
vs.
ANN E. GORDON *et al.*, Respondents. } 4926.

DAVID I. HAMMOND *et al.*, Appellants,
vs.
H. H. HONORE *et al.*, Respondents. } No. 5568.

Opinion of the Court.

The above cases present the same questions just considered in the case of Block *et al. vs.* Morrison. In the first one the plaintiff claims under the sheriff's deed, and the judgment of the circuit court was in his favor. In the other cases the plaintiffs claim as under the heirs of Samuel Hammond, and the judgments were in favor of the defendants. These judgments are all affirmed on the authority of the Block-Morrison case. Barclay, J., took no part in the disposition of the above causes. The other judges concur.

F. M. BLACK, *J.*

409 Which said opinion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1892, Division No. 1.

J. C. H. D. BLOCK *et al.*, Respondents,
v.
J. L. D. MORRISON *et al.*, Appellants.

Opinion of the Court.

This is an action of ejectment to recover lot 60, in Peter Lindell's 2d addition to the city of St. Louis. The suit was commenced by the Fourth National Bank of St. Louis. The bank conveyed the lot to Block and Holthus pending the suit, and they were then substituted as plaintiffs. They recovered in the circuit court, and the defendants appealed.

The facts of the case, so far as are material to the questions raised in this court, are these:

Joseph Hunot claimed a head-right, under a concession dated in 1802, for 800 arpens of land in what is now New Madrid county.

In 1810 he conveyed the land to Joseph Vandenbenden. The claim was presented to the first board of commissioners for confirmation, but the board rejected and disallowed it on the 31 January, 1811. It was presented again to Frederick Bates, recorder of land titles, and by him approved and recommended for confirmation on the 1 November, 1815. The claim was then confirmed by the act of Congress of April 29, 1816. Prior to the confirmation Vandenbenden conveyed the land to Rufus Easton by a deed dated the 4th November, 1815. It is conceded that the effect of this confirmation by Congress was to vest the legal title to the land in Easton.

The land having been injured by earthquakes, Easton sought to exchange it for other lands under the provisions of the act of Congress of February 17th, 1815, entitled "An act for the relief
410 of the inhabitants of the county of New Madrid, in the State of Missouri, who suffered by earthquakes." On the 12th August, 1816, the recorder of land titles issued a certificate stating that Joseph Hunot or his legal representatives were entitled to locate 480 acres under the provisions of said act. This certificate is known as New Madrid certificate No. 161.

On the 16 June, 1818, Rufus Easton, as the legal representative of Hunot, made application to locate the certificate on 480 acres of land, giving a general description of the land in the application. The deputy surveyor surveyed the land, and on the 23 June, 1819, certified this survey to the surveyor general. This survey was designated and is known as survey No. 2500. The surveyor general transmitted this survey—and the plat made a part of it—to the recorder on the 8 January, 1833. The latter recorded the same on the 2 February, 1833, and on that day issued a patent certificate to Joseph Hunot or his legal representatives for the 480 acres. This patent certificate was delivered to Peter Lindell, and it was forwarded to the General Land Office. Conflicting claims were interposed, so that the patent was not issued until the 13th August, 1859.

As has been stated, Easton signified his desire to locate his certificate on the land on the 16 June, 1818, and the survey and plat were made on the 23 June, 1819, but the plat and survey were not filed with the recorder until early in January, 1833. Rufus Easton, by his warranty deed, dated the 29 September, 1823, acknowledged by him and his wife on the 9 October, 1823, and recorded on the 9 February, 1824, conveyed 240 of the 480 acres to Samuel Hammond. This deed contains a recital that it was made "in consideration of $1,583 to him in hand paid by said Samuel Hammond and pursuant to the conditions of a certain bond executed by the said Rufus Easton to said Samuel Hammond and James I. Wilkerson, dated
411 September 3d, 1818." On July 10, 1819, Easton conveyed the residue of the 480 acres to William Stokes. There is evidence that Hammond went into possession under his title bond and remained in possession for several years. On the 8th October, 1823, the sheriff sold the 240 acres to Richard Relf and Beverly Chew by virtue of an execution issued upon a judgment against Samuel Hammond, and executed to them a deed dated the 4th November, 1823. Relf and Chew conveyed the land to Peter Lindell in March,

1840. Lindell also held a deed to the land from Hunot, dated in 1834, and it appears that Lindell took possession at that date and continued his possession until his death, in 1861. The lot in question is part of the 240 acres, and was set off to one of the heirs of Lindell in the partition of that estate. The plaintiffs have acquired all the title of such heir by deeds in due form.

The defendants claim title by deeds from the heirs of Samuel Hammond, obtained since 1870. They got possession of the land in 1879 by virtue of an execution on a judgment in an ejectment suit against the tenant of the heir of Lindell, to whom the lot had been assigned in the partition suit. The bank brought this suit to regain possession in 1882.

I. From the foregoing statement it will be seen that all parties to this suit claim under Samuel Hammond, the defendants through the heirs of Hammond, and the plaintiffs under the sheriff's deed. The title is with the defendants, unless the sheriff's deed divested Samuel Hammond of his interest in the land.

The defendants assail the sheriff's deed on several grounds, and the first is that Hammond had no interest in the land at the date of the sheriff's sale which could be sold on execution. The sheriff sold the land under the execution against Hammond on the
412 8th October, 1823, and the deed from Easton to Hammond bears a prior date, viz., 29 September, 1823, but was not acknowledged until 9 October, 1823, the day after the sheriff's sale. The plaintiffs insist that the presumption is, in the absence of other proof, that the deed to Hammond was executed and delivered on the day of its date, though acknowledged at a subsequent date. Such seems to be the rule generally asserted. Delvin on Deeds, sec. 265; Dodge *v.* Hopkins, 14 Wis., 630. But we express no opinion on this question at this time in view of what was said in Fontain *vs.* Boatmen's Savings Institution,, 57 Mo., 552.

The deed from Easton to Hammond states that it was made in consideration of $1,583 paid by Hammond and pursuant to the conditions of a certain bond executed by Easton to Hammond and Wilkinson, dated the 3 September, 1818. Hammond therefore held a title bond for the conveyance of the land as far back as 1818, which was before the date of the judgment under which the property was sold. Did this title bond create in the vendee an interest in the land which was subject to sale under execution? The answer must be in the affirmative. The statute in force at that time provides that the sheriff's deed "shall be effectual for passing to the purchaser all the real estate and interest which the debtor had or might lawfully part with in the lands at the time judgment was rendered." 1 Ter. Laws, 120, sec. 45.

In Brandt *v.* Robertson, 16 Mo., 129, this court said: "When parties have bound themselves by agreement to convey land and pay for it, equity recognizes an interest in the land as already in the purchaser, and the case is the stronger when the purchaser has actually paid in whole or in part, and in either case the interest of the purchaser may be sold on execution upon the principle that the

vendor is to be regarded as seized in equity to the use of the
413 purchaser; but if no money has been paid and if the person who may become the purchaser is not actually under any obligation to pay, then there is no seizin in the seller even in equity to the purchaser's use and there is no interest in the land in him which is liable to sale on execution." It is true the statute then in force made "all real estate whereof the defendant or any person for his use was seized in law or equity" subject to sale on execution, and "real estate" was defined to be "all estate and interest in lands, tenements, and hereditaments." The words of the statute then in force were different from the words of the statute now in question, but there is no substantial difference in their meaning. The statute now in question makes any interest in land which the debtor may sell subject to sale under execution. That a title bond for the conveyance of land gives the vendee *of* an interest which he may sell cannot be doubted. The principle of law is well settled that where there has been a contract for the sale of land the vendor becomes the trustee of the land for the vendee and that the vendee has an interest in the land which may be sold under execution. Papin *v.* Massey, 27 Mo., 445; Hart *v.* Logan, 49 Mo., 47; Morgan *v.* Boone, 53 Mo., 219. In some of these cases the vendee had been put in possession and in others the whole or a part of the purchase-money had been paid; these circumstances may make out a stronger case, but the principle still stands that the vendee in a title bond has an interest in the land which he may sell and which he may enforce by specific performance and which is subject to sale under execution.

The case of Broodwell *et al. v.* Yantis, 10 Mo., 399, is not in conflict with what has been said. There the vendee in the title bond sold his right and transferred the bond to another person and after that he, of course, had no interest in the land subject to
414 execution. In the case of McIlvaine *v.* Smith, 42 Mo., 45, the court said: "Smith had no seizin or possession of the land, no power to dispose of any estate in the land or to enjoy the occupancy or to collect the rents, nor could he call upon the trustee to execute any conveyance." Under these circumstances it was held, and properly held, that he had no interest subject to sale on execution. Here the vendee had an interest by force of the title bond which he could enforce and an interest which he could sell. It is true that the last sentence in the quotation which we have made from Brandt *v.* Robertson is to the effect that if the purchaser is not actually under any obligation to pay, then there is no seizin to the use of the vendee. It is not now necessary to say whether the holder of a mere option to purchase would or would not have an interest subject to execution sale. A bond to convey on the payment of a given sum implies an agreement to pay. We hold that the bond recited in the deed vested in Hammond an interest in the land which was subject to sale under an execution.

2. The defendants insist, in the next place, that there was not a particle of title, legal or equitable, out of the United States and in Hammond at the date of the execution sale, and that he had

nothing which could be sold, because the surveyor general did not file the survey with the recorder until early in 1838, which was about ten years after the land was sold under the execution. To establish this position we are cited to a number of cases, some of which will be specially noticed.

Rector *v.* Ashley, 6 Wall., 142, was a bill in equity and a cross-bill, both parties seeking to quiet his title as against the other. Ashley claimed under an act of Congress of June 23, 1836, granting a designated quantity of land to the State of Arkansas out of any unappropriated lands. Ashley's title was perfected under this act, so that the legal title became vested in him on 8th June,
415 1838, unless the land had been previously appropriated by a New Madrid certificate under which Rector claimed. This New Madrid certificate was issued to Cocherham. His legal representative gave to the surveyor of public lands a writing, dated 30 October, 1820, stating that he located the same on the land in question. A survey was made, of date the 30 May, 1838, which was filed with the recorder of land titles 16 June, 1838, after Ashley's title had been perfected under the act of 1836. The questions were whether these proceedings under the New Madrid certificate established such a right in the parties who represented the certificate as to withdraw the land from the list of unappropriated lands and thereby defeat the Ashley title under the act of 1836. The court refers to the prior cases of Bagnell *v.* Broderick, 13 Peters, 436; Barry *v.* Gamble, 3 Howard, 32, and Lessiuer *v.* Price, 12 Howard, 60, in which cases it was held that the United States never deemed the land appropriated by a New Madrid certificate until the survey was returned to the recorder of land titles; that it was the plat and certificate of survey returned to the recorder which constituted a location, and it was then and not before that the exchange of titles took place under the act of February 17, 1815. The court then holds, as it had before held, that the return of the survey to the office of the recorder of land titles is essential to an appropriation of the land under such certificates; that until this is done the claimant acquires no vested right. As said in Mackay *v.* Easton, 19 Wall., 619: "Until the plat was placed in the public depository in the Territory as evidence of title issuing from the United States there was no official recognition of the proceedings taken by the claimant which bound the Government." Hence it was held in the Hot Springs cases, 92 U. S., 698, that until the survey was
416 returned to the recorder's office the Government could withdraw the land from sale and thereby defeat any previous steps taken to locate the certificate on the particular tract.

Now, these cases show, and they show beyond all question, that there is no vested right in the locator of a New Madrid certificate to the lands which he proposes to take in exchange for his injured lands as against the United States until the survey had been returned to the recorder of land titles; but in our opinion they do not show, nor is it held in any of them, that the locator acquires no right as between himself and those claiming under him. As between the locator and persons claiming under him they may,

and often do, acquire rights which may be asserted and which the courts will protect.

In Landes *v.* Brant, 10 Howard, 348, Clamorgan claimed an interest in the land under Dodier, who had an imperfect Spanish grant. This claim was presented to and confirmed by the first board of commissioners in 1811 and a patent was issued to Clamorgan in 1845. In 1808, which was prior to the confirmation by the old board, Sarpy recovered a judgment against Clamorgan, under which the property was sold and conveyed to McNair by a sheriff's deed dated in the same year. The court held that Clamorgan's interest in the imperfect Spanish claim was subject to execution and approved in express terms what this court has said on the same subject in Landes *v.* Perkins, 12 Mo., 254. See also Massey *v.* Papin, 24 Howard, 362. It was also further held in this Clamorgan-Brandt case that the patent when issued related back to the time that the claim was filed for confirmation, namely, in December, 1805; so that the legal title conveyed by the patent enured to the benefit of the grantee in the sheriff's deed. The court applied the principle "that all of several parts and ceremonies necessary to complete a conveyance shall be taken together as one act
417 and operate from the substantial part by relation."

Looking now to the act of Congress of February 17, 1815, it will be seen that several steps must be taken to effect an exchange of the injured lands for others, which are pointed out in the Hot Springs cases before mentioned, and are in substance these:

1. An application by the owner of the injured land to the recorder of land titles for a certificate.

2. A certificate to be issued by the recorder.

3. Application by the holder of the certificate to the surveyor for a location of the certificate, designating in general terms the land desired.

4. Survey of the land and plat by the surveyor.

5. A return of the survey and plat to the recorder.

6. Then follows the patent certificate to be issued by the recorder, the transmission of the patent certificate to the land office, and the issues of the patent. In this case Easton procured a certificate of location, made application to the surveyor for a location of it on the land, and had a survey made by the proper officer, which survey and plat was certified to the surveyor general in June, 1819. In the meantime he executed the title bond, dated the 3d September, 1818, to Hammond for 240 acres, and Hammond took possession of the land. On the 10 July, 1819, Easton conveyed the residue of the tract to Stokes. Easton had then signified his intention in a proper form to appropriate the land in satisfaction of his certificate. He was pursuing the course specified by the act of Congress to bring about and perfect the exchange of lands. It was because of these steps taken that Stokes and Hammond were induced to purchase the land. As against Stokes and Hammond would he be heard to say he had no interest in the land? Surely not. It is perfectly clear that this bond and the deed gave Hammond and
418 Stokes the right to go on and perfect the location as it was

subsequently perfected. When perfected they would become the legal owners of their respective parcels of land so purchased from Easton. This was a valuable right acquired by them to and in the land by reason of the deeds, and it was none the less a valuable right because the Government could have appropriated the land to other purposes at any time before the plat and survey were filed with the recorder of land titles. Easton acquired a right in the land which he had a right to and did transfer to Hammond, and which Hammond could have transferred. As Hammond had an interest which he could lawfully part with, it follows that this interest was subject to sale under execution under the statute before mentioned. That interest passed by the sheriff's deed to Relf and Chew and by their deed to Lindell. When the patent was issued it related back at least to the time that Easton made his application to the deputy surveyor to have the New Madrid certificate located on the land. The doctrine that when several proceedings are essential and necessary to a deed or patent the last will be held to take effect by relation on the date of the first is well settled. Though a fiction of law, it will be applied where the ends of justice require it to be applied and the rights of third persons are not prejudiced. Lessee of French *v.* Spencer, 21 Howard U. S., 228; Shepley *v.* Cowan, 91 U. S., 337; Jackson *v.* McMichael, 3 Cowan, 75; Callahan *v.* Davis, 90 Mo., 78; 3 Wash. on Real Prop. The claims that the doctrine of relation can have no application to a New Madrid location prior to the return of the survey to the recorder is, in our opinion, not well founded and not supported by any of the authorities cited to prove that proposition. Right and justice calls for the application of the rule
419 in this case, and no reason is seen why it should not be applied.

The foregoing objections to the sheriff's deed were considered in the case of Hammond *vs* Johnson, 99 Mo., 198, but we have traveled over the ground again in view of the great value of the property involved and the earnest arguments made on the hearing of this case.

3. There is another objection to the sheriff's deed not made or considered in the Hammond-Johnson case, and that is this, that it is void because the execution issued out of the supreme court instead of out of the circuit court.

The facts are that Richard Relf, Beverly Chew, and Mary Clark obtained a judgment in the circuit court against Samuel Hammond in August, 1819, for $6,841.80. Hammond sued out a writ of error and procured a supersedeas by giving bond. On the 23 May, 1823, the supreme court gave judgment "that the judgment aforesaid in form aforesaid rendered be in all things affirmed," and that the plaintiffs "recover against the said Samuel Hammond their costs and charges by them about their defense in this behalf expended, and that they have thereof execution." On the 28 May, 1823, the clerk of the supreme court issued an execution to the sheriff of St. Louis county, reciting therein that the plaintiffs had recovered a judgment against defendant for $6,877.43 and their cost and charges, and commanding the sheriff to make said sum and the costs and

charges, the costs being taxed at $37.63. Under this execution the sheriff sold the 240 acres and several other parcels of land on the 8 October, 1823, and Relf and Chew became the purchasers.

The statute in force at the date of the judgment and execution provided that it should be the duty of the supreme court, in all cases of appeal or writs of error, to examine the record and to award a new trial, reverse or affirm the judgment of the circuit
420 court, or give such judgment as the said court ought to have given. Sec. 58, Territorial Laws, 855. Section 60 provides: "In all cases of appeal or writs of error decided by the supreme court the said court may order the record in the cause, with their decision and determination thereon written, * * * to be transmitted to the proper circuit court on payment of the costs incurred in the supreme court, and such decision and determination shall be duly carried into execution by such circuit court, or the supreme court may award execution to carry the said decision and determination into effect."

The earliest decision of this court which we have found construing these statutes is McNair *et al. v.* Lane, 2 Mo., 48. In that case there had been a judgment in the circuit court, which was affirmed on a writ of error to the supreme court. Execution was issued out of the supreme court for the debt and costs, and under that execution the real estate of the debtor was sold. In that case it was contended that the circuit court alone had power to award execution where its judgment was affirmed, but it was held that the supreme court could award execution on a judgment of affirmance. To be advised of the practice at that date we have examined that judgment and find that it was a simple judgment of affirmance with a judgment for costs. In was in all respects like the one now in question. Evans *v.* Wilder, 5 Mo., 314, was also an action of ejectment. The defendant gave in evidence three judgments of affirmance, and executions issued thereon out of this court, under which the land was sold. This court said: "The third point in argument is that the executions issued from this court without any judgment. The records shows that there were in this court three several judgments for costs at least. It seems to me that these executions
421 might well have been quashed on the return on the application of Price, but that he would not be heard on this question after the money had been paid over by the sheriff, much less can he be heard after this length of time. Nor do I see how it can be right after a lapse of many years to hold the sale void in a collateral way; but I think the executions would at no time have been quashed as to the costs of this court. This point is ruled for the appellee." The appellee claimed title under the executions.

Meyer *v.* Campbell *et al.*, 12 Mo., 397, was also an action of ejectment. The plaintiff put in evidence the very deed, it would seem, which is now in question. The question raised in the lower court was whether the execution enforced the lien of the judgment of the circuit court. The court, speaking through Judge Napton, discusses the statutes above quoted at length, and reaches these conclusions: That a judgment of affirmance of the supreme court is a

judgment that the circuit court proceed to execute its own judgment; that the affirmance being certified to the circuit court, that court proceeds to carry its own judgment into effect; that when this court designs to carry its own judgment of affirmance into effect a judgment of recovery should be added. Accordingly it was held that the execution did not enforce the lien of the judgment of the circuit court. But the court was careful to say: "We do not wish to be understood as deciding that the execution which issued upon the judgment of the supreme court in 1823 in favor of Relf and Chew was void. The question arose in the case of Evans *v.* Wilder, and the court was then of opinion that the judgment was good, at least, for costs, and seemed inclined to sustain a title acquired under the execution, although it was intimated that such an execution would be set aside upon a direct application for that purpose."

422 Since the decision in that case a judgment of affirmance has been understood to be a judgment that the circuit court proceed to execute its own judgment, which is pronounced valid and in full force. Slegel *v.* Murdock, 65 Mo., 522; Walter *v.* Tabor, 21 Mo., 75; Wilburn *v.* Hall, 17 Mo., 471; and it follows that regularly an execution should not be issued out of this court to enforce that part of a judgment which is simply and solely a judgment of affirmance, but it does not follow that this sale should be held void. The practice was unsettled at that early day. In one case a sale under an execution issued out of this court on a judgment of affirmance was held regular. In another case three like sales were held valid, though voidable by a timely motion to quash, and at a subsequent date the court clearly stated that it would not disturb that ruling, and that, too, in a case where this deed was brought in question. More than fifty years have lapsed since this sale was made. Under these circumstances we are asked to hold this sale void, and this we decline to do. We hold that the sale was and is valid in this collateral proceeding, and in saying this we assume that it appears from the sheriff's return that the first piece of property sold brought more than enough to pay the costs, and that it appears from that return that the property in question was the second piece sold.

With the foregoing conclusions it follows that the judgment should be and it is affirmed. Barclay, J., not sitting, the other judges concur.

F. M. BLACK, *J.*

423 And afterwards, to wit, on the 10th day of November, 1892, the following further proceedings were had in said cause, viz:

D. L. HAMMOND *et al.*, App.,
v.
CONN. MUT. L. INS. CO., Resp.

Come now the said appellants, by attorney, and file their motions to transfer these causes to the court in banc and for a rehearing herein.

Which said motion to transfer to court in banc is in the words and figures following, to wit:

In the Supreme Court of Missouri, October Term, 1892, Division No. 1.

DAVID L. HAMMOND *et al.*, Pl'ffs and Appellants,
vs.
CONNECTICUT MUTUAL LIFE INS. CO., Def'ts and Respondents.

And now come the said appellants and pray the court to transfer the above-named cause and action to the court in banc, to be there heard and decided.

This petition is made by these appellants because they say they are the "losing party," as a decision has been lately, at this term, made against them, and because there is an important and material "Federal question" in the case, to wit, the proper meaning and construction of the act of Congress of the United States passed and enacted Feb. 17th, 1815, known as the "New Madrid" act, and to be found in the United States Statutes at Large (vol. 4, page
424 803).

And these petitioners say that upon the proper construction and meaning of said statute depends the result of this case, and these petitioners say and believe that in the opinion in this case very lately delivered by division No. one against these petitioners the said court No. one have put an erroneous construction upon said statute, whereby and by reason of which a judgment has been rendered against these petitioners.

This petition is made under the provisions of the 4th section of the amendment to the constitution of this State, whereby two divisions of this court were established and also a court in banc.

Respectfully submitted by— D. T. JEWETT,
Attorney for Appellants.

425 Which said motion for a rehearing is in the words and figures following, to wit:

In the Supreme Court of Missouri, October Term, 1892, Division No. 1.

DAVID L. HAMMOND *et al.*, Pl'ffs and Appellants,
vs.
CONNECTICUT MUTUAL LIFE INS. CO, Def'ts and Respondents.

Motion for Rehearing.

Now come the appellants, by their counsel, and file this their motion for a rehearing and ask that it may be granted, because—

1st. The court overlooked questions decisive of the case which were duly submitted by counsel for appellants.

2nd. That the decision is in conflict with an express statute and with controlling decisions to which the attention of the court was not called through the inadvertance of the counsel for appellants.

The question decisive of the case which the court overlooked is that, as the court admits, *that* the only interest the court holds to have been attachable was such interest, if any, as was conveyed by Easton to Hammond by the bond to Hammond and Wilkinson, referred to only in the deed, dated two months or a little more after the application by Easton to the surveyor to have his New Madrid certificate located on a certain tract of land by him described—which bond was dated almost one year before any survey made—

426 and, as the court admits, that under three decisions of the United States Supreme Court, cited in the opinion, the applicant, Easton, acquired no possible right against the United States the court overlooked the plain and palpable point—that when Easton had no right or claim at all to the land against the then owner of it (to wit, the United States) he could not then give another man a right to it.

As it is a settled maxim and rule that one man cannot give another man a lawful right to a thing to which he himself has no right at all, that would be a legal impossibility. It takes infinite power to make something out of nothing. The court admits that Easton had nothing. How could he give Hammond and Wilkinson what he himself did not have?

Does his honer, who wrote the opinion, mean to say that if he gave a bond to me of some other man's house, and a creditor of mine should sell such house on an execution against me, and that in ten years after his honor would buy that house and sell it to me, that such purchaser would hold that house under such execution sale? If so, an execution sale is equal to a warrantee deed. Relf and Chew got no title to this land, unless an execution sale operates as a warrantee deed and carries to the purchaser an after-aquired title. That, to be sure, would be new law, but it is the only law that can give title to Relf and Chew. But this court has laid down the law, in most positive language, in White *et al. vs.* Davis, 50 Mo., 334, that a sheriff's deed conveys no after-acquired title.

The court say, in their opinion, "that Easton acquired a right in the land which he had a right to transfer to Hammond, and

427 which Hammond could lawfully part with, and when the patent issued it related back at least to the time Easton made his application."

And a few lines further along in the opinion the court say: "The claim that the doctrine of relation can have no application to a New Madrid location prior to the return of the survey to the recorder is, in our opinion, not well founded and not well supported by any of the authorities cited to prove the proposition."

As the above parts of the court's opinion are in direct conflict with the opinions of the Supreme Court of the United States in several cases which I cited, I must inadvertently have failed to call the attention of the court to the points therein distinctly and directly decided.

In Gibson *vs.* Choteau, 13th Wallace, p. 92, cited in my brief, but probably not commented upon, as it is not alluded to in this opinion, the court used the following language. After defining the

meaning of the doctrine of relation, the court say: "Thus, in the present case the patent which was issued in 1862 is said to take effect by relation at the time when the survey and plat of location made in 1818 were returned to the recorder of land titles under the act of Congress. At that time the title of the claimant to the land desired by him had its inception, and so far as it is necessary to protect his rights to the land and the rights of the parties deriving their interests from him the patent is held to take effect by relation as of that date."

Is it possible for language to be plainer? A note at the bottom of the page refers to the case of Lessieur *vs.* Price, 12 Howard,
428 U. S., p. 60, in which case the matter is fully discussed, and fully decided that neither the title or claim or interest of the locator, or anybody under him, goes any further back than the "return of the survey to the recorder and his approval." In the statement of this last case (Lessieur *vs.* Price), the instruction asked by the grantee of the locator is fully set out and shows that the very point under consideration here was claimed by the grantee of the locator there, and was decided against him, to wit, that the locator did not acquire a particle of interest in the land against the United States, or anybody else, that might get a title after his survey but before it was returned to the recorder. The whole case turned upon that very question, viz., to what point in the location proceedings did the patent which issued to the New Madrid locator relate back, and the court held that it related back only to the return of the survey to the recorder. If that court had held as this court has, then the judgment of that court would have been the reverse of what it was, viz., in favor of the title under the New Madrid location, as the application and survey under the New Madrid certificate was some time before any claim, equitable or legal, was attained under the grant to the State.

The opinion of this court cannot stand except as in direct opposition to those two opinions of the United States Supreme court; and all the later opinions of the United States court on this point follow that of Lessieur *vs.* Price, and refer to it as settling the law on that subject.

Appellants' attorney in this case also cited in his brief
429 the case of Gibson *vs.* Choteau, 39 Mo., on p. 560, to another point, and inadvertantly omitted to call the attention of this court to the decision of the court in that case on this very point, where it is held as well-settled law that no shadow of a title or claim of right as against or for anybody was vested in the locator till the same was returned to the recorder.

It was stated and assumed all through the case as well-settled law by the decisions of the United States Supreme Court that there was not a color of title in anybody, the locator or his grantee, till the survey was returned to the recorder.

The court, on p. 560 of that case, say: "All the requirements of this act (the New Madrid act) had been complied with. According to repeated decisions of the Supreme Court of the United States the location was not completed so as to operate as a change of title until

the survey and plat of location had been returned to the recorder of land titles and approved and recorded by him, and that then only the injured land reverted to the United States, and the inchoate equitable title to the located lands became vested in the located owner of the original land."

This suit was between parties each claiming under the locator's grantees, and though the survey was made in 1819, I think it was not returned to the recorder till 1841, and the claim had passed through several hands after the survey was made and before it was returned to the recorder.

On page 565, of the same case, the court say of certain documents conveying the land, "These documents describe the located land
when the equitable title did not exist at the time, nor until
430 after the location was completed in 1841" (when the survey
was returned to the recorder). There was a sheriff's deed of this land before the survey was returned to the recorder, and the court say it conveyed no title, for the same reasons. In short, the whole case is put upon the ground that no conveyance carried any title to anybody to the located land till the survey was returned to the recorder.

The absolute legal title, and every possible equity from the United States to the injured land in New Madrid county, remained in the locator until the survey of the new location was returned to the recorder. How, then, could he have any equity in the new location before the return to the recorder? The United States Government nowhere contemplates giving the locator at the same time an interest in two locations, viz., a legal title, with all the equities thereunder in one tract and an equity in another. The locator acquired nothing in the new location, nor did he part with any title in the injured land until the survey was returned to the recorder, because, by the statute, the title to his injured land "shall revert to and become absolutely vested in the United States" when the provisions of the act are complied with.

The cases cited by this court on the doctrine of relation are cases where the facts gave a priority of claim or right to the person claiming its protection or its application. The cases which the court has cited are all cases where the person so claiming, or the person claiming under him, had the first and exclusive claim to the land.

The case of Shepley *v.* Cowan, which the court cites, is per-
431 haps as weak a claim as was ever allowed; but there it was
allowed because a pre-emptor had the right against everybody else but the Government; and still I cited to the court two cases, decided in our supreme court by eminent judges, where they held that such exclusive right was not saleable on execution. Those decisions seem to have been overlooked by the court in this case, as they fully show that an exclusive claim to land is not saleable in this State on execution unless there is an exclusive vested and substantial right that could be made available.

In the cases cited for appellants, where a bond to convey gave an attachable interest, the obligor in the bond was then the lawful

owner of the land bonded. I never saw or heard of a case where a bond gave an attachable interest to land in which the obligor had not even an "inchoate right," as Judge Holes said, on the "inception" of a title, as Judge Field says.

Doubtless a bond might be written that would lay the foundation for a bill in equity against the obligor if he afterwards bought the land to which he had no title when he gave the bond; but that is not this case, and we are obliged to guess what that bond of Easton to Hammond and Wilkinson was, and also to guess that Wilkinson had sold out to Hammond.

In the cases I have cited, where bonds gave an equity, the bonds were before the court and the court had evidence of its terms and conditions. In this case the bond is not before the court; it is not recited at all; it is not spoken of as a "title bond," but only alluded to as a "certain bond."

In conclusion, I hope I may be allowed to say that I have been familiar with the construction put upon this New Madrid act
432 by the Supreme Court of the United States and the courts of this State for at least thirty years, when I first had occasion to examine those decisions and to know the opinions of the old land lawyers of St. Louis and the early judges of this court; and when I brought these actions I had no more doubt that the construction put upon that statute was what I claimed it to be than I had that two and two make four. When these actions were brought we knew nothing about any defects in the execution of the sheriff's deed, and I cared but little about what the description of the land sold was in said deed. I relied with perfect confidence on two points to win the case for the Ham-ond title. One was that the United States Supreme Court had settled the law that the statute of limitations did not bar the plaintiffs' title, as it was suspended during the rebellion, as fixed by the President's proclamation, and the other was that under repeated decisions of the same court, followed by the courts of this State, there was not a "color of title" in Hammond when the execution sale was made and that an execution sale does not take an after-acquired title.

I have not changed my opinion in the least, and I am sure if this court will examine fully and carefully the decisions I have cited that they will find that the decisions lay down the law as I have claimed they do, and I have too much respect for this court to suppose for a minute that they intend to twist the law to favor wealth.

D. T. JEWETT,
Att'y for Appell't.

433 And afterwards, to wit, on the 28th day of November, 1892, the following further proceedings were had in said cause, viz:

D. L. HAMMOND *et al.*, App.,
v.
CONN. MUT. LIFE INS. CO., Resp.

Now, at this day, the court having fully considered and understood the motions heretofore filed for rehearing herein and to trans-

fer these causes to the court in banc, doth order that said motions be, and the same are hereby, denied.

And afterwards, to wit, on the 15th day of December, 1892, the following further proceedings were had in said cause, viz:

DAVID L. HAMMOND *et al.*, App.,
vs.
CONN. MUT. LIFE INS. CO., Resp.

Now, at this day, there is presented to the Honorable Thomas A. Sherwood, chief justice of the supreme court of Missouri, at chambers, a writ of error to reverse the judgment in the above cause, a citation directed to the said respondents citing and admonishing it to be and appear at a Supreme Court of the United States on the 13th day of January next, a supersedeas bond in the sum of five hundred dollars, and an application for an extension of time for making the record; which said writ of error is allowed, said citation signed, said bond approved and made a part of the record herein, and said time extended for making the record until March 13, 1893.

434 Which said bond is in the words and figures following, to wit:

Know all men by these presents that we, Edward C. Smith, as principal, and Daniel T. Jewett and —— ——, as sureties, are held and firmly bound unto the Connecticut Mutual Life Insurance Company in the full and just sum of five hundred dollars, to be paid to the said Connecticut Mutual Life Insurance Company; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of December, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at the October term, A. D. 1892, of the supreme — Missouri, in a suit depending in said court between David L. Hammond, Edward C. Smith, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, Julia S. McKie and James B. McKie, her husband; Julia A. S. Morrison, Joseph F. Carr and Mary Eliza Carr, his wife; Albert T. Kelley and Adele L. M. Kelley, his wife; Clark M. Carr and Virginia A. Carr, his wife; William F. Barsh and Augusta G. Barsh, his wife; Thomas M. Price and Catharine W. Price, his wife; Joseph L. McKie and Annie W. McKie, his wife; Lulu McC. Kingman, Carrie Kingman, Laura Virginia Webb and Alexander Webb, her husband, Martha J. Kingman, plaintiffs in error, and Connecticut Mutual Life Insurance Company, defendant in error, judgment was rendered against the said plaintiffs in error, and the said plaintiffs in error having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit and a citation directed to said defendant in error, citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington D. C., on the 13th day of January next:

Now, the condition of the above obligation is such that if
435 the said plaintiffs in error shall prosecute said writ to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

EDWARD C. SMITH. [SEAL.]
DANIEL T. JEWETT. [SEAL.]
JOS. A. DUFFY. [SEAL.]
——— ———. [SEAL.]

Sealed and delivered in presence of—
——— ———.

Approved by—
T. A. SHERWOOD, *Judge.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Before me, Henry H. Denison, a notary public within and for the city of St. Louis aforesaid, personally appeared Daniel T. Jewett, to me well known, who upon oath states that he is worth over and above his indebtedness the sum of five thousand dollars, and that he owns real property to that amount subject to execution in the city of St. Louis, Mo.

DANIEL T. JEWETT.

Subscribed and sworn to before me this 16th day of December, 1892. My commission expires July 4, 1893.

[SEAL.] HENRY H. DENISON,
Notary Public.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Before me, Henry H. Denison, a notary public within and for the city of St. Louis aforesaid, personally appeared Joseph A. Duffy, to me well known, who upon oath states that he is worth over and above his indebtedness the sum of five thousand dollars, and
436 that he owns real property to that amount subject to execution in the city of St. Louis, Missouri.

JOS. A. DUFFY.

Subscribed and sworn to before me this 16th day of December, 1892. My commission expires July 4, 1893.

HENRY H. DENISON,
[SEAL.] *Notary Public.*

STATE OF MISSOURI, }
City of St. Louis. }

I do hereby certify that the parties subscribing the within bond are respectively over the age of twenty-one years and are competent to contract, and that their signatures to said bond are genuine. I further certify that said bond is good and sufficient.

Witness my hand and seal this 16th day of December, 1892. My commission expires July 4, 1893.

[SEAL.] HENRY H. DENISON,
Notary Public.

437 And afterwards, to wit, on the 27th day of February, 1893, the following further proceedings were had in said cause, viz:

D. L. HAMMOND *et al.*, App.,
v.
CONN. MUTUAL LIFE INS. CO., Resp.

Now, at this day, comes John R. Green, clerk of the supreme court of Missouri, and files his application to extend time for making transcripts in these causes to the Supreme Court of the United States until May 13, 1893; which being seen and considered by the court, it is ordered that said application be sustained and the time extended until May 13, 1893.

Which said application is in the words and figures following, to wit:

In the Supreme Court of Missouri, October Term, 1892, Division No. 1.

DAVID L. HAMMOND *et al.*, App.,
vs.
ANN E. GORDON *et al.*, Resp. } No. 4926.

D. L. HAMMOND *et al.*, App.,
vs.
CONN. MUT. LIFE INS. CO., Resp. } No. 5566.

Now, at this day, comes John R. Green, clerk of the supreme court of Missouri, and represents to the court that owing to the press of business in his office that he has not been able to prepare the transcripts to the Supreme Court of the United States in the
438 above-entitled causes within the time heretofore granted by this court to prepare the same and now here asks this court to further extend the time for preparing the said transcripts until the 13th day of May, 1893.

JOHN R. GREEN, *Clerk.*

STATE OF MISSOURI, *sct:*

I, John R. Green, clerk of the supreme court of the State of Missouri, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remain on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Jefferson, this 10th day of April, 1893.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

439 In the Supreme Court of the United States, October Term, 1893.

DAVID L. HAMMOND, EDWARD C. SMITH, and Others, Plaintiffs in Error,
vs.
ANN E. GORDON and Others.
No. 938.

In error to the supreme court of Missouri.

It is stipulated between counsel for plaintiffs and defendants that the record in the above-entitled cause shall not be printed, but that said cause, whether presented on motion to dismiss or affirm or tried on its merits in the court, may be argued, heard, and submitted on the printed record in case No. 937, to wit, the case of D. L. Hammond and others *vs.* Connecticut Mutual Life Insurance Co., it being hereby agreed that for all purposes of trial of this cause the records in both cases are identical. Whether the land in controversy in the case to be printed (viz., No. 937) is or is not within the limits of the Grand Prairie common fields of St. Louis is not to be considered and is in no way to affect the final result, though the case may be decided on its merits.

D. T. JEWETT,
Att'y for Pl'ffs.
J. B. HENDERSON,
For Defendant-.

[Endorsed:] No. 938. David L. Hammond, Edward C. Smith, & others, pl'ffs in error, *v.* Ann E. Gordon & others. Stipulation of counsel.

[Endorsed:] Case No. 15,322. Supreme Court U. S., October term, 1893. Term No., 938. David L. Hammond *et al.*, P. E., *vs.* Ann E. Gordon. Stipulation not to print record in this case, & that case be tried on the printed record in No. 937.

[Stamped:] Office Supreme Court U. S. Filed Oct. 16, 1893. James H. McKenney, clerk.

Endorsed on cover: Case No. 15,321. Missouri supreme court. Term No., 937. David L. Hammond, Edward C. Smith, Charles L. Hammond, *et al.*, plaintiffs in error, *vs.* The Connecticut Mutual Life Insurance Company. Filed May 17, 1893.

in error; and, secondly, if such question was decided by the state court against the plaintiffs in error, it was correctly decided by the state court.

This is an action of ejectment, instituted on June 13, 1874, in the state circuit court at St. Louis, Missouri, to recover Lot No. 46, in Peter Lindell's second addition to the city of St. Louis, Missouri, containing about eleven acres of ground, in United States survey 2,500, located under New Madrid certificate 161, issued to Joseph Hunot or his legal representatives.

There is a common source of title. The parties, plaintiffs and defendant, claim under Samuel Hammond. Some of the plaintiffs are descendants of Hammond, and the remaining plaintiffs claim under deeds from the descendants of Hammond, executed in 1874, and subsequent years. The defendant claims under a sheriff's deed, dated November 4, 1823, reciting a sheriff's sale on October 8, 1823, of a tract of land of 240 acres, which includes the premises in controversy, under an execution issued by the clerk of the supreme court of Missouri, on a judgment in favor of Relfe and Chew against Hammond. The date of the judgment was May 22, 1823; the date of the execution was May 28, 1823; the date of the levy was September 5, 1823; and the date of the sale was October 8, 1823. The grantees in the sheriff's deed are Relfe and Chew, and they conveyed by quit-claim deed to Peter Lindell, of date March 20, 1840, and under Peter Lindell the defendant claims title. Peter Lindell also held a quit-claim deed from the public schools of St. Louis, dated August 30, 1845, for said tract of ground.

The paper title of said Hammond to said tract of

ground commences with a deed from Rufus Easton, dated September 29, 1823, acknowledged October 9, 1823, and recorded February 9, 1824, to Samuel Hammond, conveying, with full covenants of warranty, 240 acres of ground in New Madrid location 161. This deed contains the following statement: "That the said Rufus Easton and wife, for and in consideration of the sum of fifteen hundred and eighty-three dollars, to him in hand paid by the said Samuel Hammond, and pursuant to the conditions of a certain bond, executed by the said Rufus Easton to the said Samuel Hammond and James J. Wilkinson, dated September 3, 1818, they, the said Rufus Easton and wife, have granted, bargained and sold," etc., to said Samuel Hammond, the tract of ground above mentioned.

The land sued for is embraced in the tract conveyed by the above deed from Easton to Hammond, and is in the location made of New Madrid certificate number 161. In 1802 Joseph Hunot claimed a head-right under a concession bearing date in said year of certain land in what was afterwards New Madrid county, Missouri. In 1810 he conveyed the land to Joseph Vandenbenden. The claim was presented to the recorder of land titles, and approved and recommended for confirmation on November 1, 1815. By deed of November 4, 1815, Vandenbenden conveyed the New Madrid land to Rufus Easton. The claim was confirmed by act of congress of April 29, 1816. The land was injured by earthquakes, and Easton applied to exchange it for other lands, pursuant to the act of congress of February 17, 1815, for the relief of the earthquake sufferers in New Madrid county. New Madrid certificate number 161

was issued August 12, 1816, setting forth that Joseph Hunot, or his legal representatives, were entitled to locate 480 acres on any of the publit lands of the territory of Missouri, the sale of which is authorized by by law, in lieu of the New Madrid land, which, the certificate states, had been materially injured by earthquakes. On June 16, 1818, Easton, as legal representative of Hunot, applied to locate the certificate on land in township 45 north, range 7 east, in which St. Louis is situated.

The land was surveyed and certified to the surveyor-general, June 23, 1819, and was known as survey number 2,500. The surveyor-general transmitted it to the recorder on January 8, 1833, by whom it was recorded on February 2, 1833, and on that day a patent certificate was issued to Joseph Hunot or his legal representatives. The patent of the United States to said parties for the land embraced in said survey bears date August 30, 1859; it was withheld for consideration by the secretary of the interior, on account of objections to its issue made by the Pacific railroad company; the objections were overruled and the patent ordered to issue on November 12, 1860; and it was issued on that day and delivered to Peter Lindell.

By act of congress of June 30, 1864, the United States conveyed in fee simple to Joseph Hunot, or his legal representatives, the ground embraced in the location under the New Madrid certificate 161, survey 2,500.

In 1834 Peter Lindell obtained from Joseph Hunot a quit-claim deed for survey 2,500, consideration, five dollars.

Samuel Hammond resided in St. Louis, Missouri, up

to 1824, when he departed from the state, and never returned, and died in South Carolina in 1842. There is evidence hearsay to show that he was in possession of the property sued for in 1824 and prior years, or property near it. Peter Lindell was in possession of the same from 1830 to his death in 1861.

The heirs of Samuel Hammond were, during the civil war, residents and citizens of South Carolina, Georgia and Alabama, except one, Samuel E. Hammond, who owned an undivided one-fifteenth interest, and he was a resident and citizen of Tennessee. The civil war began in South Carolina, Georgia and Alabama on April 19, 1861, and in Tennessee on August 16, 1861, and terminated in all of said states on April 2, 1866.

The United States obtained judgment in the U. S. district court for Missouri, against Samuel Hammond for $26,680.35 on September 9, 1824. Execution thereon issued and was returned *nulla bona* on March 9, 1825. A capias to the South Carolina district was issued, under which Hammond was arrested February 7, 1826. On February 21, 1826, he petitioned the President of the United States to be discharged under the insolvent debtor law, and he annexed to his petition a schedule of his property, in which no mention is made of the Hunot tract. He conveyed all of his property to the United States, as per schedule, by deed of March 18, 1826, and was discharged by order of the President, of date March 2, 1826.

The title of Samuel Hammond is vested in plaintiffs in error, by inheritance and by deeds from his descendants, made in 1874 and subsequent years. The

defendant in error claims title under Peter Lindell, to whom the purchasers at the sheriff's sale of October 8, 1823, spoken of above, conveyed by quit-claim deed in 1840 the 240 acres in United States survey 2,500. In 1845 Lindell obtained a quit-claim deed to said survey from the St. Louis public schools, but the land never was surveyed to the schools, as the law requires, and the deed gave Lindell no title.

Kissell *v.* The Schools, 16 Mo. 553;
Same case, 18 Howard, U. S. R., p. 25.

The defendant also sets up an outstanding title in a stranger under the Grand Prairie common fields of St. Louis, but there is a written agreement that this is not to be considered in this motion.

Stated chronologically, the above events occurred in the following order:

1802.	Joseph Hunot has a Spanish concession to land in what was afterwards New Madrid county, Missouri.
1810.	Joseph Hunot conveys said land to Joseph Vandenbenden by deed duly recorded.
November 1, 1815.	The claim to said land is recommended for confirmation by the United States recorder of land titles.
November 4, 1815.	Rufus Easton acquires the above New Madrid land by deed from Joseph Vandenbenden.
April 29, 1816.	The above claim is confirmed by act of congress.

August 12, 1816. New Madrid certificate No. 161 is issued to Rufus Easton.

June 16, 1818. Easton applies to locate the certificate.

September 3, 1818. Date of alleged bond from Easton to Hammond and Wilkinson, recited in deed of Easton to Hammond.

June 23, 1819. Survey of land located by Easton, under certificate No. 161.

May 22, 1823. Date of judgment of Relfe and Chew against Hammond.

October 8, 1823. Sheriff's sale under above judgment to Relfe and Chew of 240 acres in United States survey 2,500.

October 9, 1823. Acknowledgment and delivery of deed from Easton to Hammond of above 240 acres.

1824. Samuel Hammond removes from St. Louis to South Carolina.

September 9, 1824. Judgment in favor of the United States against Samuel Hammond for $26,680.35, in United States district court for Missouri.

March 2, 1826. Hammond is discharged by order of President John Quincy Adams, under the insolvent debtor law.

March 13, 1826. Hammond conveys his property to the United States, as per schedule, in which no mention is made of the above tract.

1830.	Peter Lindell took possession of the land.
January 8, 1833.	Survey of location under certificate 161 is transmitted to the recorder.
February 2, 1833.	Survey recorded and patent certificate is issued.
December 5, 1834.	Quit-claim deed of Joseph Hunot to Peter Lindell, of survey 2,500.
March 20, 1840.	Quit-claim deed from Relfe and Chew to Peter Lindell, of 240 acres, acquired by grantors at sheriff's sale of October 8, 1823, above mentioned.
1842.	Death of Samuel Hammond.
August 30, 1845.	Quit-claim deed of public schools to Peter Lindell of survey 2,500.
August 30, 1859.	Date of patent of the United States to survey 2,500.
November 12, 1860.	Patent is issued and delivered.
1861.	Death of Peter Lindell.
June 30, 1864.	Act of congress conveys to representatives of Joseph Hunot survey 2,500.

At the trial in the state circuit court, the plaintiffs in error asked, and the court refused to give, the following instruction: "The court is requested to declare the law to be that, under all the documentary evidence put in this case, there was in 1823 no legal or equitable

title in Samuel Hammond to any part of the land in what is now known as United States Survey No. 2,500, in the city of St. Louis, and for that reason (having no reference to any other) no title, legal or equitable, to any part of said land, was acquired by the purchasers under the levy and sale by Sheriff Walker, on execution against Hammond, in September and October, 1823, as put in evidence in this case."

The judgment in the state circuit court was for the defendant in error, and on appeal to the supreme court of Missouri the judgment was affirmed, and by writ of error the case is before this court.

ARGUMENT.

The motion to dismiss or affirm should be denied. The case involves federal questions. The title to the property in dispute is to be determined by the construction placed on the act of congress of February 17, 1815, for the relief of the earthquake sufferers in New Madrid county, in the territory of Missouri (4 U. S. Stat. 803). *The question of title or no title in plaintiffs in error, turns on the point whether a location made under the New Madrid act was susceptible of sale under execution, prior to the day that the survey was returned to the recorder of land titles.*

In a series of cases in this court, extending from 1839 to 1875, it has been held that under a New Madrid location, the exchange of lands between the earthquake sufferer and the government does not take place until the survey is returned to the recorder of land titles, that this date is the inception of the claimant's title and the first appropriation of the land, that until the survey is returned as aforesaid, the land covered thereby is not segregated from the public domain, and until this is done the claimant acquires no title, legal or equitable, to the land covered by the survey.

The cases referred to are: Bagnell *v.* Broderick, 13 Peters, 436, decided in 1839, to the effect that under the New Madrid act the land located by the sufferer as a compensation for the land surrendered, is not deemed to be appropriated by him until the survey is returned, the plat and certificate of the survey being the only ev-

idence of location recognized by the government; Barry *v.* Gamble, 3 How. (U. S.), 32, decided in 1844, that the first appropriation of the land, under a location of a New Madrid certificate, is the return of the survey by the surveyor, with a notice of location, to the office of the recorder; Lessieur *v.* Price, 12 How. (U. S.), 59, decided in 1851, that the *inception of title* to a particular tract of land under a New Madrid certificate, is the recording of the plat and survey in the recorder's office; Rector *v.* Ashley, 6 Wall., 142, decided in 1867, that in perfecting a title to land located under the New Madrid act, no vested interest in the land, nor any appropriation of it binding on the United States, was effected until after the survey was made and returned into the office of recorder of land titles; Mackay *v.* Easton, 19 Wall., 619, decided 1873, that under the New Madrid act, the title of the owners of the injured New Madrid land passed to the United States at the same time that the title to the land located in lieu thereof passed to the claimant, and that this exchange of titles took place when the survey was returned to the recorder of land titles; and Hot Springs cases, 2 Otto, 698, decided in 1875, that under the New Madrid act, until the survey was returned to the surveyor's office, the land covered thereby was not segregated from the public domain and appropriated to the claimant so as to give him a vested right thereto; and in Gibson *v.* Chouteau, that the patent related no farther back than the return of the survey to the recorder.

The New Madrid act provides that the owners of lands in New Madrid county, as said county existed on November 10, 1812, whose lands have been materially injured by earthquakes, are authorized to locate the like

quantity of land, subject to certain limitations, on any of the public lands of the territory of Missouri, the sale of which is authorized by law; and where such location is made subject to the provisions of the act, the title of the person or persons to the land injured as aforesaid, shall revert to and become absolutely vested in the United States. The following steps to effect an exchange of lands are required to be taken under the act:

1. Application to the recorder of land titles, showing the party's claim and praying a certificate of location.

2. Certificate of location, issued by the recorder, showing the amount of land to which the applicant was entitled.

3. Application to the surveyor, presenting the certificate of location, and designating the lands which the party desired to appropriate.

4. Survey and plat made by the surveyor.

5. Return of the survey and plat to the recorder of land titles to be filed and recorded, with a notice designating the tract located and the name of the claimant.

6. Certificate of the recorder stating the facts, and that the party was entitled to a patent.

7. Transmission of this certificate to the general land office.

8. The patent.

(Hot Springs cases, 92 U. S., at p. 708.)

In the present case, Rufus Easton, on June 16, 1818, applied to locate New Madrid certificate number 161. On September 3, 1818, he gave a bond to Samuel Ham-

mond and James J. Wilkinson. Nothing is known of this bond as to its terms, conditions or contents. Its only appearance in this case is the recital of it contained in the deed of Rufus Easton to Samuel Hammond, acknowledged October 9, 1823, above alluded to. The bond is treated by the defendant in error and by the supreme court of Missouri as a title bond. After the execution of this alleged title bond, the land located by Easton under New Madrid certificate number 161 was on June 23, 1819, surveyed. At the date of the execution of the alleged title bond, the land to which the court below and the defendant in error applied it, had not been marked out on the earth's surface. The location was applied for in township 45 north, range 7 east, the township in which St. Louis is situated. It was not until the following year that the location was surveyed. In 1833 the survey was transmitted to the United States recorder of land titles and recorded by him. In the meantime, Easton by a warranty deed, acknowledged on October 9, 1823, conveyed the 240 acres in U. S. survey 2,500 to Hammond. Hammond's interest in said 240 acres was sold to Relfe and Chew by the sheriff on October 8, 1823, one day before the deed from Easton to Hammond was acknowledged and delivered. Hammond had no interest, because the survey not having been returned to the recorder, the entire title to the property in survey 2,500 was in the United States. Nothing was out of the United States at this time, and no right or interest, legal or equitable, existed in Hammond to or in U. S. survey 2,500 that could be sold under execution. The territorial statute of Missouri with reference to ex-

ecutions was in force from 1807 to 1825, when it was repealed by the revised statutes of Missouri, February 21, 1825, section 13, page 500. It was in force in the year 1823, and governed the execution sale of Hammond's alleged interest in the 240 acres in U. S. survey 2,500 on October 8, 1823. It was as follows: "Where lands and tenements shall be taken on execution by the sheriff, it shall be his duty to expose the same to sale at the court-house door on some day while the courts of common pleas or quarter sessions in the district are in session, having previously given twenty days' notice of the time and place of sale, and what lands and tenements are to be sold, and where they lie, by at least six hand-bills affixed in the most public places in different parts of the district. And upon such sale, the sheriff shall make return of the writ, together with a copy of the advertisement put up as aforesaid, and give the buyer a deed duly executed and acknowledged in court, for what it is sold, which deed shall recite the execution, purchaser and consideration, and shall be effectual for passing to the purchaser all the real estate and interest which the debtor had or might lawfully part with in the lands at the time the judgment was obtained."

(Territorial Statutes of Missouri, Vol. I., page 120, section 45.) *Vide* appendix to brief.

The interest of Hammond in the 240 acres in U. S. survey 2,500, attempted to be sold on execution on October 8, 1823, was under said statute the interest which he had or might lawfully part with in said lands

at the time the judgment was obtained. The date of the judgment of Relfe and Chew against Hammond was May 22, 1823. The question whether Hammond had an interest in land covered by a New Madrid location that could be sold on execution prior to the return of the survey, is a federal question depending upon the construction to be placed on the New Madrid act of congress. It was not competent for the Missouri legislature to create an interest in land in a New Madrid location against the provisions of the New Madrid act of congress.

The act of congress of March 6, 1820 (6 U. S. Stat., 455), for the admission of Missouri as a state, provides "that the legislature of said state shall never interfere with the primary disposal of the soil of the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers."

The constitution of Missouri, adopted pursuant to the above act of congress, in section 1, of article 10, contains this provision: "The general assembly of this state shall never interfere with the primary disposal of the soil by the United States, nor with any regulation congress may find necessary for securing the title in such soil to the *bona fide* purchasers." (Rev. Stat. of Mo. of 1845, p. 17.)

The territorial statute of 1807, governing sales of interests in lands and which was in force in 1823, was in force pursuant to section 2 of the schedule of the constitution of Missouri of 1820, which says that "all laws now in force in the territory of Missouri which are not repugnant to this constitution, shall remain

in force until they expire by their own limitation, or be altered or repealed by the general assembly."

In Bagnell *v.* Broderick, 13 Peters, 436, at page 450, this court say: "Our opinion is, first, that the location referred to in the (New Madrid) act is the plat and certificate of survey, returned to the recorder of land titles, because, by the laws of the United States, this is deemed the first appropriation of the land; and the legislature of Missouri had no power, had it made the attempt, to declare the notice of location filed with the surveyor-general, an appropriation contrary to the laws of the United States."

In Van Brocklin *v.* Tennessee, 117 U. S., at page 168, it is said: "But public and unoccupied lands, to which the United States have acquired title, either by deeds of cession from other states, or by treaty with a foreign country, congress, under the power conferred on it by the constitution, to dispose of and make all needful rules and regulations respecting the territory or other property of the United States, has the exclusive right to control and dispose of, as it has with regard to other property of the United States; and no state can interfere with this right, or embarrass its exercise."

In Gibson *v.* Chouteau, 13 Wall., 92, it is said: "The power of disposition of the public domain, and of making all needful rules and regulations, is subject to no limitations. No state legislature can interfere with this right, or embarrass its exercise."

In Irvine *v.* Marshall, 20 How., 564, it is said: "When the engagements or undertaking of the United States, with respect to property exclusively and confessedly their own, from a period anterior to the exist-

ence of the territorial government, shall have been consummated; when the subject, and all control over it, shall have passed from the United States, and have become vested in a citizen or resident of the territory, then, indeed, the territorial regulations may operate upon it; but whilst these remain in the United States, or are affected by their rights, or powers or duties, those rights, duties or powers can in nowise be influenced by an inferior and subordinate authority."

In Wilcox *v.* Jackson, 13 Peters, 516, quoted in Irvine *v.* Marshall, it is said: "We hold the true principle to be this: That whenever the question in any court, state or federal, is whether a title to land which had once been been the property of the United States has passed, that question must be resolved by the laws of the United States."

In Gibson *v.* Chouteau, 13 Wall., 92, it is said: "With the legal title, when transferred, goes the right to possess and enjoy the land; and it would amount to a denial of the power of disposal in congress if these benefits, which should follow upon the acquisition of that title, could be forfeited because they were not asserted before that title was issued. Yet such forfeiture is claimed by the defendants in this case, and is sanctioned by the decision of the supreme court of Missouri."

In the present case the title to the land embraced in survey 2,500 remained in the United States until 1833, when the survey was returned to the recorder of land titles, and the attempted sale by the sheriff in 1823 of Hammond's alleged interest in survey 2,500 was an interference with the primary disposal of the soil by the

United States. This is a federal question decided adversely to the plaintiffs in error, in the state court, and establishes jurisdiction in this court of this writ of error.

The jurisdiction can be maintained on the further ground that a federal question was decided by the state court by giving for defendant in error the two following instructions, numbered in the record as 5 and 6:

"If the court, sitting as a jury, finds from the evidence in the case that all the land in controversy was inhabited, cultivated or possessed as common field lots of the Grand Prairie common fields of St. Louis by any one inhabitant of or by several different inhabitants of the town of St. Louis, prior to the 20th day of December, 1803, said inhabitants each inhabiting, cultivating or possessing one or more lots thereof for himself; that such lots were in regular succession, adjoining each other on the sides, and all having uniform and straight front and uniform east and west lines; then the plaintiff cannot recover, providing the court, sitting as a jury, shall further find that the land sued for clearly lies within and constitutes a part of the land so inhabited, cultivated or possessed as the Grand Prairie common fields of St. Louis."

"If the court, sitting as a jury, believes from the evidence in the case that the land in controversy lies within the limits of what was known in Spanish times as the Grand Prairie common fields of St. Louis, and that said common fields consisted of divers and several lots of land lying contiguous to and adjoining each other, with uniform boundaries and constituting altogether a solid block of lots, and that said lots were all

inhabited, cultivated or possessed by one or more of the inhabitants of the town of St. Louis prior to the 20th day of December, 1803, then the plaintiff cannot recover; provided the court shall further believe that the lots so inhabited, cultivated or possessed constituted a part of what was, prior to December 20, 1803, and up to the 13th day of June, 1812, known and recognized as the Grand Prairie common fields of St. Louis, and provided, further, the court finds that all the land in controversy lies within the limits of said Grand Prairie common fields and within the lots so inhabited, cultivated or possessed prior to December 20, 1803, as a part of said common fields."

These instructions present the question of the interference of the Grand Prairie common fields of St. Louis with U. S. survey 2,500, and this a federal question. It is a contest between two titles emanating from the United States.

In Hammond *v.* Johnston, 142 U. S., 73, the writ of error was dismissed on the ground that the ruling of the state court involved no federal question and was broad enough to maintain the judgment without considering the federal questions raised. Since that decision, made in 1891, the supreme court of Missouri has decided the present case, and it is reported under the name of Block *v.* Morrison, 112 Mo., 343. The cases involved the same controversy, but in the last opinion of the Missouri court, the judgment is expressly founded on two propositions: first, that in 1818, prior to the survey of the New Madrid location, Hammond acquired an interest in the ground covered by the subsequent survey of said location that was susceptible

of transfer by sheriff's sale in 1823 (prior to the return of the survey), under execution against Hammond; and, secondly, that when the patent of the United States issued in 1860 for the ground covered by said survey, it related back to the year 1818, which was fifteen years prior to the return of the survey in 1833.

The above propositions are denied by the plaintiffs in error. Their consideration and determination depend upon the true construction of the New Madrid act of congress, and each of them presents here a federal question.

The Missouri court distinctly announces those two propositions as the foundation of their opinion, and in the following language (112 Mo., R., p. 356–7): "When the patent issued it related back at least to the time that Easton made application to the deputy surveyor to have the New Madrid certificate located on the land."

And again, at bottom of same page and top of next, the court say: "The claims that the doctrine of relation can have no application to a New Madrid location, prior to the return of the survey to the recorder is, in our opinion, not well founded, and not supported by any of the authorities cited to prove that proposition." Strange to say, the Missouri court makes these declarations, when all the cases in this court touching New Madrid locations were cited by plaintiffs, and nearly all of them are referred to by the Missouri court, but, as we say, their proper construction and meaning were misapprehended by the Missouri court, and all were held to relate only to rights against the government; whereas, in fact, they were all (except the Hot Springs

case) controversies between individuals, as to who got the first claim to the land. This point was elaborately argued in Lessieur *v.* Price (12 Howard), in a controversy between two claimants to the same land, and was fully and clearly decided, and all the subsequent decisions in this court, on that subject, follow and approve that case. In the case of Gibson *v.* Chouteau, before cited, this court distinctly say, in so many words, that the patent relates no farther back than the return of the survey to the recorder, and cites Lessieur *v.* Price as authority. It seems to us, as if the Missouri court determined not to be controlled by the numerous decisions of this court. The attorney for defendant in error, and the Missouri court, cite sundry cases, as to what the "doctrine of relation" does. We do not see their importance as to the construction of the New Madrid act, as all application that the doctrine has to proceedings under that act, has been fully explained and decided by this court in the decisions construing that act.

And it seems to us, that it was impossible for the supreme court of Missouri to decide as it did without *intending to overrule the decisions of this court, as to the construction of that act.* We do not (as defendant's attorney says) deny the application of the "doctrine of relation" to the New Madrid act. We simply aver that the mode and manner and effect of the application of that doctrine to the New Madrid act, if any it has, has been fully determined and settled by this court, in numerous decisions construing that act, and that all are fatal to the positions taken by defendant's attorney and by the supreme court of Missouri in this case.

The case of Landes *v.* Brant, in 10 Howard, apparently so much relied upon by defendant and the supreme court of Missouri, has very little, if any, resemblance to this case. The same judge (Catron) delivered the opinions in Landes *v.* Brant and in Lessieur *v.* Price. In both cases, the title by patent had been out of the United States for twenty years or more before suit was brought.

In Landes *v.* Brant, Claymorgan, whose right was sold on execution, had been a settler on the land for ten years or more before Louisiana was sold by France to the United States. His land had been surveyed to him by the Spanish government. He had filed his claim before the old board of commissioners, created and continued by the acts of congress of 1805, 1806 and 1807, and the act of 1807 declared that any person thus claiming and holding land "shall be confirmed in his title." The treaty between France and the United States protected such titles.

Claymorgan had an equity that was good against everybody else, and even against the United States, if the United States did not break their pledged faith. Well might the court hold that such a title was an equity that could be sold on execution.

An "equitable right" is everywhere an exclusive right, good against everybody else. Otherwise it is no "right" at all. This court held in Shepley *v.* Cowan, 91 U. S., 330, that a preemption right was a "right" against everybody else but the government, and that the patent related back to the date of the preemption. But the supreme court of Missouri, in Bray *v.* Bagsdale, 53 Mo., 170, decided that a preemption

claim was not such "interest in lands" as could be sold on execution under the statute of the state, at that time, which said that "all real estate whereof defendant or any person, to his use, is seized in law or equity, can be sold on execution."

The question of limitation, as decided by the state court, presents a federal question, decided adversely to plaintiffs in error as to one-fifteenth of the property sued for. The state court refused the following instruction, asked by plaintiffs in error: "15. The court is requested to declare the law to be, that upon all the documentary evidence put into the case by both sides, upon the subject of the making out, recording, signing, passing upon and issuing the patent by the land department at Washington, to Joseph Hunot or his legal representatives, the said patent was not operative to take the fee of the land covered by it out of the United States till November 12, 1860."

The patent of the United States conveying the property in survey 2,500, bears date August 30, 1859. It was not issued by the government until November 12, 1860. It was withheld for consideration by the secretary of the interior on objections to its issue, made by the Pacific railroad company. The objections were overruled and the patent ordered to issue on November 12, 1860. By act of congress of June 30, 1864, the United States conveyed to the representatives of Joseph Hunot all property in survey 2,500 subject to adverse claims, if any.

The case of Moore *v.* Robbins, 96 U. S., 530, is authority to the point that when the patent is issued by the land department and delivered to and accepted

by the grantee, the legal title to the land passes, and not before; and nothing in U. S. *v.* Schurz, 102 U. S., 378, militates against this view. It is the delivery or completion of the patent that passes the title, and where, as in this case, the patent was withheld by direction of the government, in order to consider objections to its issue, made in good faith and entitled to and given a hearing by the officers of the land department, it cannot be said that the title of the United States passed prior to the delivery of the patent.

The date at which the government title vested under the patent, was November 12, 1860. Prior to this time limitation did not run. (Gibson *v.* Chouteau, 13 Wall., 92.) The period of time embraced between November 12, 1860, and June 13, 1874, when this action of ejectment was commenced, is thirteen years, seven months and one day.

The heirs of Samuel Hammond were residents and citizens of South Carolina, Georgia and Alabama during the civil war, except one, who was a resident and citizen of Tennessee. In determining whether limitation had run against them on June 13, 1874, the duration of the civil war in those states is to be deducted. The war began in South Carolina, Georgia and Alabama on April 19, 1861, and ended in those states and in Tennessee on April 2, 1866. (The Protector, 12 Wall., 700.) It began in Tennessee according to the President's proclamation under the act of congress of July, 1861, on August 16, 1861. As to the Tennessee interest (one-fifteenth), the war lasted four years, seven months and sixteen days, which deducted from thirteen years, seven months and one day (the period between

November 12, 1860, and June 13, 1874), leaves nine years less fifteen days, which is short of the statutory limitation, and, therefore, the Tennessee interest was not barred. If, however, the date of the patent, August 30, 1859, is taken instead of the date of its delivery, the Tennessee interest is barred because there were ten years' possession against that interest, exclusive of the war. As to the remaining interests held in South Carolina, Georgia and Alabama, there is no bar even if the date of the patent is taken. The period from August 30, 1859, to June 13, 1874, is fourteen years and nine months and thirteen days. The period of the war as to those states was four years, eleven months and thirteen days, which deducted leaves nine years and ten months—two months less than ten years.

The statute of limitations was suspended as to citizens of insurgent states during the war. (Ross *v.* Jones, 22 Wall., 576.) Therefore it is clear, that the action was not barred in 1874, as to the residents of South Carolina, Georgia and Alabama, nor as to the resident of Tennessee, unless the date of the patent is taken as the initial point, instead of the date of its completion or delivery.

As to the clause in the motion that asks for an affirmance of the judgment, we desire to say that the judgment of the supreme court of Missouri is directly opposed to the ruling of this court, namely, that the title to the land embraced in survey 2,500 remained in the United States until 1833, when the survey was returned to the recorder. (Bagnell *v.* Broderick, 13 Peters, 436; Barry *v.* Gamble, 3 How., 32; Lessieur *v.* Price, 12 How., 59; Rector *v.* Ashley, 6 Wall., 142;

Mackay *v.* Easton; 19 Wall., 619; Hot Springs Cases, 2 Otto, 698; Gibson *v.* Chouteau, 13 Wall., 92.)

Rufus Easton had no title to the premises in controversy prior to 1833. Up to that time the land was not segregated from the public domain, nor appropriated to the claimant. The exchange of titles between Easton and the United States took place in 1833. In that year the title of Easton to the injured New Madrid land passed to the United States, and at the same time the equitable title to the land in controversy passed to Easton. The inception of Easton's title to said land was in 1833. Under the terms of the warranty deed of 1823, from Easton to Hammond, which deed conveyed the after-acquired title of Easton, the equitable title vested in Hammond in 1833. Upon his death in 1842, it passed to his children and their descendants, from whom the plaintiffs in error by inheritance, and by a chain of conveyances, have acquired and now hold the title.

The title of the defendant to said premises proceeds from Relfe and Chew, who, on October 8, 1823, purchased at the execution sale mentioned above, the interest, on May 23, 1823, of Hammond, if any, and in 1840 conveyed said interest by quit-claim deed, to Peter Lindell, who was in possession and had been since 1830, and continued to be until his death, in 1861, when the possession passed to his heirs. In 1834 Lindell obtained from Joseph Hunot a quit-claim deed, the consideration of which was five dollars for the whole survey 2,500, but as Hunot had parted with his title to the New Madrid land by his conveyance to Vandenbenden in 1810, it is clear he had no interest in the land loca-

ted in lieu thereof and contained in survey 2,500. The after-acquired title of Hammond did not pass under the sheriff's deed of 1823 to Relfe and Chew. (White *v.* Davis, 50 Mo., 333; Hamilton *v.* Mining Co., 38 Fed. Rep., 562; Gentry *v.* Callahan, 98 N. C., 448; McArthur *v.* Oliver, 60 Mich., 605.)

In the present case the defendant asserts, and the state court held, that under the doctrine of relation the patent related back to June 16, 1818, when Easton applied to locate New Madrid certificate 161.

Our answer is that under the doctrine of relation the title under the patent related back to the day the survey was returned to the recorder, January 8, 1833, that being the inception of the title under the patent, and affords no relief to the defendant, whose entire claim to title rests on the sheriff's deed conveying the Hammond title, if any, as it existed at the date of the judgment, May 22, 1823, and when, in fact, Hammond possessed no title. On May 22, 1823, the land embraced in survey 2,500 was owned by the United States. This ownership was exclusive. No possession was good against it. Easton had no interest in the land, legal or equitable, prior to January 8, 1833, when the survey of his location under New Madrid certificate 161 was returned to the recorder. Hammond had no interest, legal, equitable or by possession, prior to the last mentioned date, when the title conveyed to him by the warranty deed of Easton, of October 9, 1823, enured to him. No possession prior to 1833 could create any interest in the possessor, or transfer any estate from the government. Up to 1833 the entire, complete, and absolute title was in the

government, and no shred, or interest, or equity existed in Hammond or Easton, or in any person, as to the land in question. "The doctrine of relation is a fiction of law, adopted by the courts solely for the purposes of justice, and is only applied for the security and protection of persons who stand in some privity with the party that initiated proceedings for the land, and acquired the equitable claim or right to the title." (Gibson *v.* Chouteau, 13 Wall., at p. 101.) It does not affect strangers not connecting themselves with the equitable claim or right by any valid transfer from the original or any subsequent holder. (Gibson *v.* Chouteau, 13 Wall., 92, at pp. 101 and 102; Lynch *v.* Bernal, 9 Wall. 315, at p. 325.)

In the present case the defendant claims under Lindell, who claimed under the sheriff's sale of the Hammond interest, if any, as the same existed on May 22, 1823, the date of the judgment. Hammond had no interest or equity in the land at that date. The entire proprietorship of the land was then in the government. The sheriff's deed conveyed no after-acquired interest of Hammond. (See cases above cited.) There was no valid transfer by the sheriff's deed to Relfe and Chew, from whom Lindell derived title; and, therefore, the defendant claiming under Lindell is not entitled to have the doctrine of relation applied to help out its alleged title to these lands. The ends of justice do not require its application. If, however, the doctrine of relation is applied to this case, the patent that was issued in 1860 on the location of New Madrid certificate 161, related back only to 1833, when the survey of said location was transmitted to the recorder. (Gibson *v.*

Chouteau, 13 Wall., at pp. 100, 101; Lessieur *v.* Price, 12 How. (U. S.), 59.) The doctrine of relation affords no relief to the defendant, who stands here without any title to the demanded premises.

The state court, in its application of the doctrine of relation, failed to observe the distinction between a Spanish grant and a New Madrid claim or location. The title to the former existed in the claimant in 1803, when France sold Louisiana to the United States, and was protected by the treaty. The United States never had title to the ground and all that they did was to confirm the Spanish or French title. In the New Madrid location the United States were originally the owners of the ground exchanged for the injured New Madrid land, and the question at what point of time an equitable interest was out of the government and into the claimant is fixed by this court to be when the survey is returned to the recorder of land titles, and not before. The New Madrid act is a benefaction, and it is for the federal court to say when the title vests under the act.

The questions in this case are important and involve property rights of large value. We respectfully submit that the motion to dismiss or affirm should be overruled, and the cause be heard on its merits when reached on the docket.

D. T. JEWETT AND
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APPENDIX TO PLAINTIFF'S BRIEF.

The territorial statutes of Missouri, Vol. 1, p. 120, Sec. 45, enacted in 1807, say: "Where lands and tenements shall be taken in execution by the sheriff, it shall be his duty to expose the same to sale at the court-house door on some day while the courts of common pleas or quarter sessions in the district are in session, having previously given *twenty days' notice* of the time and place of sale, and what lands and tenements are to be sold, and where they lie, by at least six handbills affixed in the most public places in different parts of the district.

"And upon such sale, the sheriff shall make return of the writ, together with a copy of the advertisement put up as aforesaid, and give the buyer a deed duly executed and acknowledged in court, for what is sold, which deed shall recite the execution, purchaser and consideration, and shall be effectual for passing to the purchaser *all the real estate and interest which the debtor had or might lawfully part with in the lands at the time the judgment was obtained.*"

The above statute remained in force till repealed by the Revised Statutes of Missouri, February 21st, 1825, page 500, Sec. 13.

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JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 937.

DAVID L. HAMMOND, EDWARD C. SMITH, AND OTHERS, PLAINTIFFS IN ERROR,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO.

IN ERROR TO SUPREME COURT OF MISSOURI.

J. B. HENDERSON,
For Defendant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

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No. 937.

DAVID L. HAMMOND, EDWARD C. SMITH, AND OTHERS, PLAINTIFFS IN ERROR,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO.

STATEMENT.

This is an action of ejectment originally brought in the circuit court of St. Louis, in Missouri, on June 13, 1874.

The petition or declaration conforms to the statutes of that State and alleges that the plaintiffs on June 1, 1874, were entitled to the possession of the land sued for, and that the defendant on the day thereafter entered into the premises and unlawfully withholds from the plaintiffs the possession thereof, to their damage, &c.

The premises sued for were described as United States survey No. 2500, located under New Madrid certificate No. 161, issued to one Joseph Hunot or his legal representatives. The defendant denied possession of the whole tract, but admitted possession of a lot of about 11 acres, No. 46, as numbered on Peter Lindell's second addition to St. Louis, which lies within the said survey.

Among the several defenses pleaded by the defendant the seventh is as follows:

"7. And defendant, for further answer, says that plaintiffs, in order to recover in this case, rely on the legal title alleged to have been vested in one Samuel Hammond in 1823, which title they, the said plaintiffs, claim has passed to them by inheritance and by subsequent conveyances to them from the heirs of said Hammond.

"Defendant says that whatever title, legal or equitable, was then or at any time vested in said Samuel Hammond was sold on the 8th day of October, 1823, under and by virtue of a certain judgment and execution by John K. Walker, the sheriff of St. Louis county, Missouri, and the same was, on November 4, 1823, by him, the said sheriff, conveyed, as provided by law in such cases, to Richard Relfe and Beverly Chew, the purchasers at said sheriff's sale, and thereupon the said Relfe and Chew became vested with all the title previously owned in said land by Samuel Hammond.

"And defendant says that on the 20th day of March, 1840, the said Relfe and Chew conveyed, by general warranty deed, all their right in said land thus acquired to Peter Lindell, and this defendant claims by inheritance from said Peter Lindell, deceased, to his heirs and from them by mesne conveyances to this defendant, and it says that Peter Lindell, from the date of said deed of Relfe and Chew, in March, 1840, held actual, adverse, open, notorious, and hostile possession of said lands against the said Hammond and the said Relfe and Chew and against all others under and by virtue of said deeds from Sheriff Walker and from Relfe and Chew up to October, 1861, when he died, and that thereafter his (the said Lindell's) heirs held like possession of said land up to the time of their conveyance thereof, since which time this defendant has in the same manner held like adverse possession thereof as the legal representative of said Lindell, claiming from him as its predecessor, and successively from said Peter Lindell and under said sheriff's deed to this date.

"Plaintiffs by replication deny that the title of said Hammond was sold on the 8th day of October, 1823, or on any other day by virtue of a judgment and execution against said Hammond by Sheriff Walker or by any one, and deny

that there ever was any valid sheriff's deed to Relfe and Chew or to any one else to said land."

A jury was waived and the trial of facts had before the court, and on the trial the plaintiffs, to show title to the land in themselves, gave in evidence:

1. A Spanish concession to said Hunot, made in 1802, for 800 arpents of land, lying in New Madrid county, Missouri.

2. A deed of conveyance by said Hunot, dated in 1810, conveying said land in New Madrid to one Vandenbenden.

3. A deed of conveyance by said Vandenbenden, dated in 1815, conveying said land to one Rufus Easton.

4. A presentation of the claim for confirmation thereof, made to the old board of commissioners in 1811, and the rejection of the claim by said commissioners.

5. The report of Frederick Bates, recorder of land titles for the Missouri Territory, dated November 1, 1815, recommending the claim for confirmation.

6. The act of Congress of April 29, 1816, confirming said claim.

7. New Madrid certificate No. 161, issued by Recorder Bates, dated August 12, 1816, whereby Joseph Hunot or his legal representatives were entitled to locate 480 acres, the balance under the limitations of the act of Congress, on any of the public lands of the Territory of Missouri, the sale of which was authorized by law.

8. An application to the surveyor general by Rufus Easton, "as the legal representative of Joseph Hunot," to locate said certificate on certain lands near St. Louis, in township 45, No. 7 east, dated June 16, 1818.

9. A copy of survey made by the deputy surveyor, Joseph C. Brown, dated June 23, 1819, and numbered 2500, in satisfaction of said certificate No. 161.

10. A return of said survey by the surveyor general of Illinois and Missouri to the recorder of land titles for the State of Missouri on January 8, 1833, and the approval and record of said survey by said recorder on the 2d day of February, 1833.

11. A deed of conveyance by Rufus Easton and wife to Samuel Hammond, dated September 29, 1823, by which they conveyed to said Hammond, pursuant to the conditions of a certain bond, executed by the said Rufus Easton to the said Samuel Hammond and James J. Wilkison, dated 3d September, 1818, the whole of the land located by New Madrid certificate No. 161, "except the 234 acres of land of the said tract conveyed to William H. Ashley, as will appear by deed of 1819, recorded in the recorder's office of St. Louis county."

12. Evidence to show that there was, and is, no deed on record in said county by which Rufus Easton conveyed, or attempted to convey, to said Ashley any part of said land.

13. A certified copy of a deed dated July 10, 1819, by said Easton and wife to William Stokes, conveying by metes and bounds 234 acres of the land located by said certificate No. 161. The tract so conveyed covers the southern part of said location of the Hunot certificate, and calls for a corner of the Samuel Hammond land.

14. The act of Congress approved June 30, 1864, entitled an act concerning certain locations of lands in the State of Missouri, which act relinquishes to Joseph Hunot or his legal representatives all interest, if any, of the United States in and to said survey No. 2500.

15. Evidence to show that the land sued for lies in that part of said survey No. 2500 which was conveyed by said Easton to Samuel Hammond by deed of September 29, 1823.

16. Evidence to prove the death of Samuel Hammond in 1842, and to show the names and residences of his heirs in 1874, when this suit was instituted, and tending to show that during the period of the rebellion they resided within the Confederate States.

17. Certain deeds of conveyance by the heirs of Samuel Hammond, dated in 1873 and thereafter, purporting to convey to J. L. D. Morrison and E. C. Smith and others for $1,330 two-thirds of the whole Hunot location; also mesne conveyances between these and other parties, tending to show that whatever of title remained in Samuel Hammond at his death was at the time the suit was instituted vested in the plaintiffs. In other words, the plaintiffs in error derive their claim to the land through conveyances made in 1873–'4, by persons professing to be the descendants of Samuel Hammond, to whom they paid, as shown by the deeds, the sum of $1,330 for 240 acres of land, lying in the city of St. Louis, worth from five thousand to twenty-five thousand dollars per acre.

The defendants, to show title out of the plaintiffs and in themselves, offered in evidence:

1. The certified copy of a sheriff's deed dated November 4, 1823, signed by John K. Walker, sheriff of St. Louis county, Missouri, duly acknowledged on the same day, and recorded on January 27, 1824, in which it is recited that a writ of execution was issued from the clerk's office of the supreme court of Missouri, for the third judicial district thereof, dated May 23, 1823, on a judgment recovered in said court by Richard Relfe, Beverly Chew, and Mary Clark against Samuel Hammond for the sum of $6,877.43½; that

said execution was directed to the sheriff of St. Louis county, in said State of Missouri, commanding him that of the goods and chattels, lands and tenements, of said Samuel Hammond the said sheriff cause to be made the said sum, with costs and charges; that he duly return said execution and render to the plaintiffs therein their damages and costs; and further reciting that by virtue of said execution the said sheriff did, on the 5th day of September, 1823, levy upon and seize all the right, title, and interest, estate and property of the said Samuel Hammond in and to certain real estate described in said deed and in the return of said sheriff, among which is the following, to wit:

"A tract of land containing 240 arpents, more or less, bounded on the south by land of Gratiot and Phillipson, on the west by land of John P. Cabané, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond spring;" and further reciting that after having advertised the sale of said land agreeably to law, as will appear by a copy of the advertisement, which is made a part of said deed, he did, on the 8th day of October, 1823, agreeably to the advertisement aforesaid, expose to public sale for cash, at the court-house door, in the city of St. Louis, during the sitting of the St. Louis circuit court, all the right, title, and interest, estate and property of said Samuel Hammond in and to the said tract of land, and that at said sale Beverly Chew and Richard Relfe, being the highest and last bidders for said tract of land, became the purchasers thereof at and for the sum of $100; and reciting further that "in consideration of the payment of said sum, and by virtue of the authority in him vested by law, he, the said sheriff, did and does thereby transfer and assign to said Beverly Chew and Richard Relfe, their heirs and assigns forever, all the right, title, and interest, estate and property of him, the said Samuel Hammond, in and to the above-described tract of land, that he might or could sell as sheriff."

This deed is executed in the form required by law, and was recorded January 27, 1824.

2. A certified copy of the record and proceedings of a suit instituted by Richard Relfe, Beverly Chew, and Mary Clark in the St. Louis circuit court, in the year 1818, against Samuel Hammond, in which a judgment was rendered in favor of the plaintiffs and against said Hammond, at the August term, 1819, which said judgment was affirmed on writ of error by the then superior court of Missouri on the 22d day of May, 1823, on which judgment the execution was issued, as aforesaid, under which the land of Hammond was sold as hereinbefore stated.

The judgment in the circuit court, rendered in 1819, recited as follows: "Therefore it is considered that the said Richard Relfe, Beverly Chew, and Mary Clark recover against the said Samuel Hammond their damages aforesaid (amount stated), in form aforesaid by the court assessed, together with their costs and charges by them about their suit in this behalf expended, and that they have thereof execution."

The judgment in the supreme court, rendered May 22, 1823, is as follows: "And now, at this day, come the parties aforesaid, by their respective attorneys aforesaid, and the court here, being sufficiently advised of and concerning the premises, consider that the judgment aforesaid, in form aforesaid rendered, be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said Richard Relfe, Beverly Chew, and Mary Clark recover against the said Samuel Hammond their costs and charges by them about their defense in this behalf expended, and that they have thereof execution."

The execution issued on May 28, 1823, recited that whereas the plaintiffs, "at our supreme court for the third judicial circuit, recovered against Samuel Hammond the sum of

$6,877.43½, which to the said Relfe, Chew, and Clark was adjudged for their damages which they sustained as well by reason of the non-performance of certain promises and undertakings as for their costs and charges by them about their suit in this behalf expended, as appears to us of record; these are therefore to command you," &c.

The sheriff's return on the writ is:

"Made on this execution by the sale of the property described in the enclosed advertisement the sum of $480, which satisfies of the debt $427.77, after deducting the costs. Richard Relfe and Beverly Chew were the purchasers. October 8, 1823."

3. Evidence to show that at the time of the sheriff's sale, in 1823, Charles Gratiot and Joseph Phillipson owned all the land adjoining the Hunot survey on the south; that Charles P. Cabanné then owned all the land contiguous to said survey on the west, and that Wm. Stokes then owned the Ann Camp tract, which constituted a part of the eastern boundary of said location and survey of Joseph Hunot.

4. The testimony of witnesses who knew the Hammond spring in 1823, and what was known as the Hammond tract of land, about three miles west of St. Louis, and bounded as hereinbefore stated, and tending to show that the land, as advertised and sold, and as described in the sheriff's deed aforesaid, was at the time of the sale known in the neighborhood as the land of Samuel Hammond, and tending to identify it as the land purchased by Hammond from Rufus Easton, and constituting a part of the Hunot location and survey No. 2500, and that said Hammond was at the time of said sale and for several years previous had been in the actual possession of said lands.

5. A deed of conveyance from Joseph Hunot and wife to Peter Lindell, dated December 5, 1834, purporting to convey to said Lindell and his heirs and assigns his title and interest, if any, in the Hunot survey No. 2500.

6. A letter of attorney by Richard Relfe and Beverly Chew authorizing John O'Fallon, of St. Louis, Mo., to sell and convey, in his discretion, all lands owned or possessed by them in the State of Missouri, dated October 19, 1838.

7. A deed of conveyance of Richard Relfe and Beverly Chew by John O'Fallon, their attorney-in-fact, conveying to Peter Lindell for $1,500 their right, title, and interes in and to the land described in Sheriff John K. Walker's deed, hereinbefore recited, giving the same description as contained in the said sheriff's deed, and further describing it as "being a part of a location of 480 acres made by Rufus Easton as the legal representative of Hunot, and more part ticularly described by reference to the certificates of Joseph C. Brown, formerly sheriff of St. Louis county, recorded in Book K, p. 397," &c. This deed is dated March 20, 1840.

8. The act of Congress "making further provisions for settling the claims to land in the Territory of Missouri," approved June 13, 1812 (2 U. S. Stat., p. 748). The second section of this act provides that all village lots, outlots, or common-field lots of St. Louis, not claimed by private individuals or held by the town of St. Louis as commons, if not reserved by the President of the United States for military purposes, "shall be, and the same are hereby, reserved for the support of schools" in the said town or village of St. Louis.

9. The act of Congress of January 9, 1831 (4 U. S. Stat., 435), and the act of Congress of June 15, 1864, relinquishing to St. Louis all the right, title, and interest of the United States in and to all town or village lots, outlots, and common-field lots, which were reserved by the act of 1812 for the support of schools, and that the same be sold and disposed of by the schools in such manner as may be directed by the legislature of Missouri.

10. An act of the legislature of Missouri, dated February 13, 1833, incorporating the board of president and directors of the St. Louis public schools, and authorizing said board to sell and dispose of all school lands owned or to be owned by said board. (2 Vol. Terr. Laws, 1824 to 1836, p. 379, sec. 1 and 9.)

11. A deed of conveyance by the board of president and directors of the St. Louis public schools to Peter Lindell, dated August 30, 1845, purporting to convey to said Lindell all the right and title of said board in and to any lots or lands covered by or lying within the limits of survey No. 2500, in the name of Joseph Hunot or his legal representatives. For further authority of the school board to convey this land, see statement and brief in the case of Block and others *vs.* Hammond and others.

12. A certified copy, together with the plats of the survey of certain lots in the Grand Prairie common fields of St. Louis, made by Deputy Surveyor Wm. H. Cozens under instructions of 1846 and 1855, and the proceedings of the Commissioner of the General Land Office and of the Secretary of the Interior in 1856 and 1857, leading to the final approval and recording of said surveys in 1857, and tending to show that according to said surveys, as thus approved and recorded, the lot of land sued for lies within the outboundaries of the Grand Prairie common fields of St. Louis.

13. The testimony of divers witnesses to prove the actual and adverse possession of the Hunot location, including the land in controversy, by Peter Lindell and those claiming under him from about 1840 down to the institution of plaintiffs' suit.

14. The death of Peter Lindell in 1861 and the partition and division of his lands among his heirs, under which the

lot in controversy was assigned and conveyed to Mrs. Logan D. Dameron, one of said heirs.

15. A chain of conveyances, all for valuable considerations, from Mrs. Dameron and husband down to the defendant, by which the title of said Dameron in said land, if any, became vested in the said defendant.

16. Defendant then offered in evidence a judgment obtained by the United States against Samuel Hammond in the district court of the United States for Missouri on September 9, 1824, for $26,680.35.

17. An execution issued on said judgment to the marshal of the United States, dated October 9, 1824, and a return thereon made on March 9, 1825, by H. Dodge, marshal, as follows: "The within-named Samuel Hammond has no lands and tenements, goods and chattels, in my district that I can find whereon to levy and satisfy this execution or any part thereof. Neither is the body of said Hammond to be found in my district."

18. The return of an execution with a capias clause issued to the marshal of the district of South Carolina against said Hammond on said judgment, as follows:

"UNITED STATES *vs.* SAMUEL HAMMOND.

"Judgment, September 9, 1824, $26,680.35.

"Marshal's office, South Carolina district.

"CHARLESTON, *February* 7, 1826.

"I do hereby certify that of the goods and chattels, lands, etc., of Samuel Hammond I could find none on which to levy the damages and costs set forth in a certain execution issued in behalf of the United States by the district court of Missouri against Samuel Hammond. I do furthercertify

that, in obedience to the mandate of said execution, I have caused the said Samuel Hammond to be arrested, and he is now confined in the gaol of this district, where he will remain till discharged by law.

"(Signed) MORTON A. WARING, *Marshal.*"

19. The copy of a petition, dated February 21, 1826, made by Samuel Hammond to the President of the United States to be discharged from imprisonment under the insolvent debtor laws of the United States, in which he alleges that "he hath no other property than that in the States of Missouri and in Arkansas and in Illinois, a schedule of which is annexed to this (his) petition and that he is willing and ready to assign the same to the United States."

20. A copy of the schedule of property attached to said petition, in which there is no claim of ownership or mention of claim by said Hammond to any part of the land included in the New Madrid location of Joseph Hunot.

21. A copy of the order of discharge of Hammond, made by the President of the United States, dated March 2, 1826.

22. A copy of the deed of Samuel Hammond to the United States, dated March 13, 1826, in which, after reciting the judgment, execution, arrest, and imprisonment, as aforesaid, he states that he had "petitioned the President of the United States for my (his) discharge upon my (his) assigning, which I (he) offered to do, all the property, real and personal, of which I (he) was possessed or in which I (he) had any interest, as set forth in a schedule annexed to the said petition, a copy of which schedule is also annexed to this deed of assignment."

And thereupon he conveys to the United States all the property described in said annexed schedule.

The defendants then asked the court to make the following declarations of law in this case, which were given:

First. The title on which plaintiffs must recover, if they recover at all, is that which was vested in Joseph Hunot or his legal representatives, either by the patent of the United States, dated August 30, 1859, conveying to them survey No. 2500, with certain reservations and exceptions therein specified, or by the act of Congress of June 30, 1864, by which the United States relinquished its right, title, and interest in and to said survey No. 2500 to Joseph Hunot or his legal representatives.

Second. The title under which plaintiffs claim is founded upon the deed of conveyance made by Rufus Easton to Samuel Hammond, dated September 29, 1823, by which he sold and transferred to said Hammond a part of the New Madrid location, made by said Easton as the representative of Joseph Hunot, it being admitted that the lot in dispute is covered by the land described in said deed. But the court declares it to be the law of this case that whatever of right, title, or interest in said land was acquired by Samuel Hammond under the said deed of Easton to him was divested from Hammond and his heirs and transferred to Richard Relfe and Beverly Chew by the deed of John K. Walker, sheriff of St. Louis county, dated November 4, 1823.

Third. The description of the land as conveyed in said sheriff's deed, taken in connection with the evidence adduced tending to identify it as the land of Samuel Hammond, so conveyed by Easton in the New Madrid location of Joseph Hunot or his legal representatives, together with the subsequent admission of Hammond in 1826 that he had no interest in said land, is sufficiently definite and certain to pass the interest of Hammond in said land to the pur-

chasers, Relfe and Chew, the grantees in the said sheriff's deed.

Fourth. If the deed of conveyance from Joseph Hunot to Joseph Vandenbenden, made in 1810, for the old Spanish concession in the district of New Madrid, and the deed of Vandenbenden to Rufus Easton for the same land, made in 1815, followed by the confirmation of said concession or grant in 1816, the application to exchange said land under the act of 1815, the issue of New Madrid certificate No. 161, the application of Easton to locate said certificate on the land in dispute, the survey of said land and return thereof in 1819, the transmission of said survey to the recorder of land titles in January, 1833, the approval and record of said survey by the recorder in February, 1833, the issue of a patent certificate by said recorder for said survey, and the issue of the patent by the United States, dated August 30, 1859, were sufficient in law to vest the legal title to the land in controversy in Samuel Hammond as the legal representative of Joseph Hunot, then such legal title enured to the said Relfe and Chew as the assignees of said Hammond under the judgment, execution, sale, and sheriff's deed read in evidence by defendants.

The judgment was for the defendant, from which the plaintiffs appealed to the supreme court of Missouri.

On a hearing in the latter court, the judgment of the circuit court was affirmed.

The grounds upon which this affirmance is placed will appear from the following extracts from the opinion of the supreme court:

Opinion of Supreme Court of Missouri.

"From the foregoing statement it will be seen that all the parties to this suit claim under Samuel Hammond, the defendants (plaintiffs) through the heirs of Hammond, and

the plaintiffs (defendants) under the sheriff's deed. The title is with the defendants, unless the sheriff's deed divested Samuel Hammond of his interest in the land.

* * * * * * *

"In this case, Easton procured a certificate of location, made application to the surveyor for a location of it on the land, and had a survey made by the proper officer; which survey and plat were certified to the surveyor general in June, 1819. In the meantime he executed the title bond, dated the 3d September, 1818, to Hammond for 240 acres, and Hammond took possession of the land. On the 10th July, 1819, Easton conveyed the residue of the tract to Stokes. Easton had then signified his intention in a proper form to appropriate the land in satisfaction of his certificate. He was pursuing the course specified by the act of Congress to bring about and perfect the exchange of lands. It was because of these steps taken that Stokes and Hammond were induced to purchase the land. As against Stokes and Hammond would he (Easton) be heard to say he had no interest in the land? Surely not. It is perfectly clear that this bond and the deed gave Hammond and Stokes the right to go on and perfect the location as it was subsequently perfected. When perfected they would become the legal owners of their respective parcels of land so purchased from Easton. This was a valuable right acquired by them to and in the land by reason of the deeds, and it was none the less a valuable right because the Government could have appropriated the land to other purposes at any time before the plat and survey were filed with the recorder of land titles. Easton acquired a right in the land which he had a right to and did transfer to Hammond and which Hammond could have transferred. As Hammond had an interest which he could lawfully part with, it follows that this interest was subject to sale under execution under the (State) statute before mentioned. That interest passed by the sheriff's deed to Relfe and Chew, and by their deed to Lindell. When the patent was issued it related back at least to the time when Easton made his application to the deputy surveyor to have the New Madrid certificate located on the land. The doctrine that when several proceedings are essential and necessary to a deed or patent the last will be held to take effect by relation on the date of the first is well settled. Though a fiction of the law, it will be applied

when the ends of justice require it to be applied and the rights of third persons are not prejudiced. (Lessee of Frack *v.* Spencer, 21 How., U. S., 228; Shepley *v.* Cowan, 91 U. S., 337; Jackson *v.* McMichael, 3 Cowan, 75; Callahan *v.* Davis, 90 Mo., 78; 3 Wash. on Real Prop.) The claim that the doctrine of relation can have no application to a New Madrid location prior to the return of the survey to the recorder is, in our opinion, not well founded and not supported by any of the authorities cited to prove that proposition. Right and justice call for the application of the rule in this case, and no reason is seen why it should not be applied."

* * * * * * *

"The deed from Easton to Hammond states that it was made in consideration of $1,583 paid by Hammond and pursuant to the conditions of a certain bond executed by Easton to Hammond and Wilkinson dated 3d September, 1818. Hammond therefore held a title bond for the conveyance of the land as far back as 1818, which was before the date of the judgment under which the property was sold. Did this title bond create in the vendee an interest in the land which was subject to sale under execution? The answer must be in the affirmative. The statute in force at that time provides that the 'sheriff's deed' shall be effectual for passing to the purchaser all the real estate and interest which the debtor had or might lawfully part with in the lands at the time the judgment was rendered."

1 Ter. Laws, p. 120, sec. 45.

The plaintiffs have brought the case into this Court from the Missouri supreme court by writ of error.

Motion to Dismiss or Affirm.

On this state of facts the defendant moves the Court to dismiss the plaintiffs' writ of error or affirm the judgment of the supreme court of Missouri for the reasons following:

First. The record fails to present any Federal question decided against the plaintiffs by the supreme court of Missouri; and—

Second. Should this Court hold that a Federal question is involved in the judgment of the supreme court of Missouri, the defendants insist that it was properly decided by said court.

Brief and Argument.

The writ of error must be dismissed unless it appear that, in the judgment of the supreme court of Missouri, there was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against its validity; or unless there was drawn in question the validity of a statute of, or an authority exercised under the State of Missouri, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity; or unless some title, right, privilege, or immunity was claimed by the plaintiffs in error under the Constitution or treaties or statute of or commission held or authority exercised under the United States, and the decision was against the title, right, privilege, or immunity specially set up or claimed by the plaintiffs under such Constitution, treaty, statute, commission, or authority.

The Constitution of the United States (art. 3, sec. 4) provides that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

The only pretense on which error can be claimed is that the judgment of the Missouri court in some way conflicts with this provision of the Federal Constitution and interferes with the disposition of its lands by the Government.

If the decision sustaining the sheriff's deed be correct, not only Hammond but all the heirs of Hammond are precluded from setting up any interest in the land, and plaintiffs have no standing in this Court.

"Where the supreme court of a State in rendering a judgment decides a Federal question, and also decides against the plaintiff in error on an independent ground not involving a Federal question, and broad enough to maintain the judgment, the writ of error will be dismissed without considering the Federal question."

Hopkins *v.* McClure, 133 U. S., 380.

I.

Both plaintiffs and defendants here claim under the same patent. No right claimed under the Constitution or laws of the United States is here drawn in question. The only controversy was and is whether, under the laws of Missouri, the title which has emanated from the United States passed from one person to another under a deed executed in accordance with the State law. That is a subject for State and not Federal jurisdiction. This Court adopts the local law of real property, as ascertained by State decisions, whether those decisions are based on the construction of the local statutes or form a part of the unwritten law of the State.

Authorities.

In Romie *v.* Casanova, 1 Otto, 379 (error to supreme court of California), both parties claimed title from the city of San José. This court said:

"The title of the city was not drawn in question. It is said that depended on the treaty of Guadaloupe Hidalgo and the several acts of Congress to ascertain and settle private land claims in California, but this does not appear in the record. Even if it did, the case would not be different, for both parties admit the title of the city, and their litigation extends only to the determination of the rights which they have severally acquired under it."

In McStea *v.* Friedman, 2 Otto, 723, it is said:

"No Federal question was involved in the decision of the supreme court (of California). The city's title was not

drawn in question. The real controversy was as to the transfer of that title to the plaintiffs in error, and this did not depend upon the 'constitution or any treaty or statute of or commission held or authority exercised under the United States.'"

Citing—

4 Saw., 180.
3 Wood, 61.

"The Government has no interest in contests between persons claiming *ex post facto* the grant, nor is it charged to decide between such claimants."

Castro *v.* Hendricks, 23 How., 438 (16 : 576).

In a Mexican claim when the Government no longer claims the land in question to be public land the right of the United States to contest the case ceases, and this court will not entertain jurisdiction to determine to which of two private claimants it may belong.

U. S. *v.* Morillo, 1 Wall., 706 (17 : 626).

The plaintiff claims that the Government conveyed the land to Samuel Hammond as the legal representative of Joseph Hunot. This defendant does not dispute the fact, but says that Hammond's title was divested by a sheriff's sale made under the laws of Missouri, and that by the several conveyances read in evidence that title is now vested in him, the defendant. The rulings of the State circuit court and the opinion of the supreme court of Missouri distinctly place their decisions and judgments on the validity of the sheriff's deed and its sufficiency to pass Hammond's title to Relfe and Chew. As was said by this Court in Cook Co. *v.* Calumet and C. Canal and D. Co., 135 U. S., 635, "there was no decision against a claim or title asserted under the United States, but simply that the county did not obtain title under the grant of the State; that the act of 1852 imposed a positive duty on the county to transfer such title as it acquired to the purchaser from the United States, and

that where lands had been bought in good faith from the United States the title to such lands did not become vested in the county, but passed to the purchaser under his entry. This construction by the State court of the laws of the State is controlling in the premises."

See Gormley *vs.* Clark, 134 U. S., 338.

It matters not that the plaintiffs may have raised a Federal question on argument.

"Although a Federal question may have been raised in the State court, yet if the case was decided in that court on grounds not involving a Federal question, but broad enough to sustain the decision, this Court will refuse to entertain jurisdiction."

See Henderson Bridge Co. *v.* City of Henderson, 141 U. S., 679.
Kreiger *v.* Shelby R. Co., 125 U. S., 39.
De Saussure *v.* Gaillard, 127 U. S., 216.
Hale *v.* Akers, 132 U. S., 554.
Hopkins *v.* McLure, 133 U. S., 380.
Johnson *v.* Risk, 137 U. S., 300.

Finally, the defendant insists that this Court has passed directly upon the question presented in this case, in the case of Hammond and others *v.* Johnston, receiver, &c., 142 U. S., 73 (opinion by the Chief Justice).

The record in this case is identical in every respect with that in Johnston's case, the land in both cases being a part of the Hammond tract.

In the latter case this Court said:

"Plaintiffs in error contended that, at the time when Easton conveyed to Hammond, and when the sheriff sold the land under the execution, the title to the land was in the United States. The court conceded that the legal title was in the United States, but held that there was an equitable interest in Easton and those claiming under him, which was sub-

ject to sale under execution, and that, under the statutes of Missouri, the sheriff's deed was effectual in passing to the purchaser all the estate and interest which the debtor had at the time of the judgment. And the court used this language: 'Under the view we have taken of the sheriff's deed, and the force and effect we have given to it, the title is in the defendants, and the judgment will be affirmed. This result as to the effect of the sheriff's deed rendered it unnecessary to pass upon the other questions presented by the record, but we have ruled upon them in order that there may be no embarrassment to either party in a review of this judgment in the Supreme Court of the United States.'

"It is well settled that where the supreme court of a State decides a Federal question in rendering a judgment, and also decides against the plaintiff in error upon an independent ground not involving a Federal question and broad enough to maintain the judgment, the writ of error will be dismissed without considering the Federal question."

II.

If, however, this Court should be of opinion that the decision of the Missouri court involves a Federal question, that question was properly decided and the judgment should be affirmed.

Easton, being the owner of the New Madrid land, made his bond to convey 240 acres of it to Hammond on September 3, 1818. On September 29, 1823, Easton, for a valuable consideration and "pursuant to the conditions" of his bond to that effect, conveyed the land in fee to Hammond. This same land, by metes and bounds, was sold by the sheriff on October 8, 1823, and the title under the sheriff's deed is now held by defendants in error.

In the case of Lamb *v.* Davenport, 18 Wall., 307, it is held that contracts made by actual settlers on the public lands concerning their possessory rights are valid as between the parties to the contract, though there be at the time no act of Congress by which the title may be acquired and though

the Government is under no obligation to either of the parties in regard to the title, unless they are forbidden by some positive law.

"The purchaser by such a contract acquired an equitable right to the land, which would be enforced when the legal title was obtained."

See Stark *v.* Starr, 94 U. S., 477.

On the 20th May, 1836, Congress passed an act providing "that in all cases where patents for public lands have been or may hereafter be issued, in pursuance of any law of the United States, to a person who had died or who shall hereafter die before the date of such patent, the title to the land designated therein shall enure to and become vested in the heirs, devisees, or *assignees of such deceased patentee as if the patent had issued to the deceased person during life.*"

The formula "or his legal representatives" embraces representatives of the original grantee in the land, such as assignees or grantees, and leaves the question open to inquiry in a court as to the party to whom the patent should enure.

Hogan *v.* Page, 2 Wall., 605 (17: 854).

Carpenter *v.* Rannells, 19 Wall., 138 (22: 77).

A Spanish claim to land, if confirmed by the commissioners, has the effect of a confirmation to the legal representatives of the person to whom the original concession was made, where the commissioners passed upon nothing but the merits of the original concession.

Connoyer *v.* Schaeffer, 22 Wall., 254 (22: 827).

Under the act of 1836 a patent issued upon a Spanish claim which had been confirmed to the claimant or his legal representatives vested the legal title in him, and

enured by way of estoppel to his grantee and those who claimed by deed under him.

Stoddard *v.* Chambers, 2 How., 284 (11: 269).
Landes *v.* Brant, 10 How., 348 (13: 449).
Easton *v.* Salisbury, 21 How., 426 (16: 181).

"A tract of land subject to entry when purchased and paid for ceased to be the property of the United States or subject to its disposal. The legal title is then held by the United States for the benefit of the purchaser, and on proper application the Government is bound to issue its patent to the purchaser."

Cornelius *v.* Kessell, 128 U. S., 456 (32: 482).

The subsequent grant of lands in a Spanish claim to the heirs of the claimant who had executed a mortgage thereon by act of Congress of 1836 carried the equities of the mortgagee with the legal title, of which he took the benefit.

Massey *v.* Papin, 24 How., 362 (16: 734).

The case of Burke *v.* Marshall, 6 How., 285, was a sale of a possessory right to two lots in the town of Dubuque. This Court said:

"At the time of this transaction the United States had not yet offered the land on which the town of Dubuque was situated for sale; but, notwithstanding the occupants of lots were mere tenants at sufferance only, they proceeded to make valuable improvements under the expectation of the grant of the right of pre-emption from the Government, or, at least, that they could complete their title by purchase from it when the lots should be offered for sale. These possessions and improvements were treated as valid and subsisting titles by the settlers, and were the subjects of contract and sale by conveyances in the form usual for passing a title in fee."

"The right of the United States to dispose of her own property is undisputed, and to make rules by which the lands of the Government may be sold or given away is

acknowledged; but subject to these well-known principles parties in possession of the soil might make valid contracts even concerning the title predicated upon the hypothesis that they might thereafter lawfully acquire the title except in cases where Congress had imposed restrictions on such contracts."

Lamb *v.* Davenport, 18 Wall., 307.
Sparrow *v.* Strong, 3 Wall., 97.
Myers *v.* Croft, 13 Wall., 291.
Thredgill *v.* Pintard, 12 How., 24.

"The rule has always been that covenants for title worked an estoppel; but this rule has been carried farther, and it is now established that where the grantor sets forth on the face of his conveyance, by averment or recital, that he is seized of a particular estate in the premises, and which estate the deed purports to convey, the grantor and all persons in privity with him shall be estopped from ever afterwards denying that he was seized and possessed at the time he made the conveyance. The estoppel works upon the estate and binds an after-acquired title as between parties and privies."

French *v.* Spencer, 21 How., 228.

The same doctrine has always been applied by this Court to conveyances by sheriff deeds of equitable or inchoate interetss in lands.

In the case of Landes *v.* Brant, 10 How., 348, it appeared that one Dodier was the grantee of a Spanish concession which, previous to confirmation, he conveyed to Clamorgan in 1807. In 1808 Sarpy recovered a judgment against Clamorgan in the district court of St. Louis, on which an execution was issued, and Clamorgan's interest was sold by the sheriff and purchased by McNair. After these proceedings the board of commissioners confirmed this claim, in 1811, and a patent was issued thereon in 1845 to Clamorgan or his legal representatives.

The chief question before this Court was whether the sheriff's sale and deed conveying the equitable interest con-

stituted the purchaser a legal representative of Clamorgan. On that question this Court said:

"'But there is another consideration equally conclusive in favor of the sheriff's deed in the present instance.' Clamorgan died in 1814, and by his will devised his lands to his illegitimate children, under whom the plaintiff Landes claims title. In 1845 a patent issued purporting to convey to Clamorgan, in fee simple, the land in dispute. According to common law the patent was void for want of a grantee; and to supply this defect Congress had passed a general law (May 20, 1836) declaring as follows (here citing the statute of 1836 in regard to patents). Of course the assignee, by *bona fide* conveyance, would come in before a volunteer, such as an heir or devisee. Here the assignee of the devisee is suing the alienee of the devisor. The patent issued in 1845 is the ultimate and conclusive evidence of title in this instance, as the board of commissioners had no power to grant and communicate the fee held by the United States. Their decision was final to this extent—the officers of the Government were bound to award the patent to Clamorgan without any further action on the part of Congress. But this adjudication does not stand on the footing of cases where the commissioners were ordered to report and Congress reserved the power to confirm the report, and thus to grant the fee by act of Congress. In such cases this Court has held that Congress had granted the fee, and that no patent was required as a further assurance of title. To what description of assignee, then, did the title enure according to the act of 1836? Necessarily to one claiming not the legal but the equitable title existing when the patent issued, and in him the legal title is vested by the patent. The same rule was applied in the case of Stoddard *v.* Chambers, 2 How., 316.

"In 1800 a concession was made to Mordecai Bell; in 1804 Bell conveyed to James Mackay, and in 1815 Mackay conveyed to Amos Stoddard, whose heirs were the plaintiffs.

"The claim was filed with the board in 1808, and in 1836 it was confirmed to Mordecai Bell 'or his legal representatives.'

"This Court held, on the foregoing state of facts, that 'when under the act of 1836 the report of the commission-

ers was confirmed to Bell and his legal representatives the legal title vested in him and enured by way of an estoppel to his grantee and those who claimed by deed under him.' There was no covenant for title in either the assignment from Bell to Mackay or from Mackay to Stoddard, each being quitclaim assignments.

"So again in the case of Bissell *v.* Penrose, 8 How., 317, the same principle was maintained. In August, 1800, Tillier filed his claim with the board and asked a confirmation for 800 arpents, and it continued before the different boards, sitting at St. Louis, until 1836, when it was confirmed by Congress.

"In 1818 Tillier assigned his claim to Penrose, and in 1820 Penrose assigned his claim acquired from Tillier to Mary B. and Anna Penrose, who were the plaintiffs in the ejectment suit, and who recovered the land under their deed of 1820.

"In *every* case where this Court has been called on to investigate titles where conveyances of lands had been made during the time that a claim was pending before a board of commissioners, and where the claim was ultimately confirmed in the name of the original claimant, the intermediate assignments have been upheld against the confirmee and his heirs or devisees in the same manner as if he had been vested with the legal title at the date of the conveyance. We are, therefore, of the opinion that the sheriff's deed made to McNair in 1808 must be supported on this ground also."

The holder of a register's certificate of the purchase of a lot in the town of Dubuque lawfully acquired and issued by the register under the two acts of July 2, 1836, and March 3, 1837, has such an equitable estate in the lot before the issuing of the patent as will subject the lot to sale under execution under the statutes of Iowa.

Levi *v.* Thompson, 4 How., 17.

The brief of the attorney in that case is as follows:

"The legislature of the Territory of Iowa could confer no authority on the sheriff to sell the property in question because the title was yet in the United States and had not

passed to Levi and Thompson at the time of the sheriff's sale."

And to sustain the contention he cited Bagnell *v.* Broderick, 13 Peters, 436, and Wilcox *v.* Jackson, 13 Peters, 498 *et seq.*

This Court said:

"This right to the fee and a patent in this case gave to Levi and Thompson that equitable right to the land under the certificate of the receiver of the land office which the law of Iowa has made subject to execution for the satisfaction of judgments."

Again:

"The fee continues in the United States until the issue of the patent, but the right to the fee was in the purchasers, and they were entitled to a patent for the land unless there was some legal objection by the United States against issuing it, of which this Court is not advised."

The effect of a sheriff's deed conveying such inchoate titles is specifically set forth in the case of Landes *v.* Brant, already cited, in the following language:

"The proceeding was not void, but passed to the purchaser at execution sale all the title that would have passed from Clamorgan had he made a quitclaim deed to McNair, the purchaser. * * * That such was the force and effect of a regular sheriff's deed under the local laws of the then Missouri Territory is not open to question, nor is it controverted; and the only remaining consideration in this branch of the case is whether the sheriff's deed can be set up as a defense at law, notwithstanding the confirmation and patent, both of which are of subsequent date to the sheriff's sale and deed."

The court thereupon proceeded to declare the conveyance by the sheriff to be a valid title, in the following language:

"The confirmation of 1811 and the patent of 1845 must be taken to relate to the first act—that of filing the claim in

1805. On this assumption intermediate conveyances made by the confirmee or by the sheriff on his behalf, of a date after the first substantial act, are covered by the legal title, and passed that title to the alienee, and on this ground the deed made by the sheriff to McNair is valid."

And this brings us to the doctrine of relation as uniformly defined and explained by this Court.

The Doctrine of Relation.

In Stark *v.* Starrs, 6 Wallace, 418, this Court said:

"When, in fact, the patent was issued it relates back to the inception of the right of the patentee, so far as it may be necessary to cut off intervening claimants."

In Shepley *v.* Cowan, 91 U. S., 337, it is said:

"The party who takes the initiatory steps in such cases, if followed up to patent, is deemed to have acquired the better right as against others to the premises. The patent which is afterwards issued relates back to the date of the initiatory act and cuts off all intervening claimants."

This latter case is absolutely conclusive of the case now at bar. It fully explains the language of the Hot Springs cases, which were decided at the same term of court and reported in the next volume of reports. The court refers to the cases of Frisbie *v.* Whitney, 9 Wall., and the Yosemite Valley cases, 15 *id.*, 77, and says that an inchoate right obtained by settlement or otherwise is not such a vested interest as to deprive Congress of the power to dispose of the property; that Congress could at any time reserve such lands from sale for arsenals, fortifications, or other public uses, and that a settlement on public land, accompanied even by improvement, "did not confer upon the settler any right in the land *as against the United States* or impair in any respect the power of Congress to dispose of the land *in any way it might deem proper.*"

The court is particular to use the words "*as against the United States*" and to italicize them in its opinion. In a subsequent part of the opinion the court says:

"But whilst, according to those decisions, no vested right as *against the United States* is acquired until *all* the prerequisites for the acquisition of the title have been complied with, parties may, as against each other, acquire a right to be preferred in the purchase or other acquisition of the land when the United States have determined to sell or donate the property. In all such cases the first in time in the *commencement* of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be the first in right."

The court continues:

"When these prerequisites (steps necessary to obtain title) were complied with the settler for the first time acquired a *vested interest in the premises*, of which he could not be subsequently deprived. He was then entitled to a certificate of entry from the local land officers and ultimately to a patent from the United States. Until such payments and entry the acts of Congress gave to the settler only the privilege of pre-emption in case the lands were offered in the usual manner—that is, the privilege to purchase them in that event in preference to others."

The question in this case (Shepley *v.* Cowan) was whether Chartrand's title related back to his original settlement on the land, so as to antedate the inception of the title of the State.

The court expressly says that this mere right of preference, as against third persons, did not rise to the dignity of an equity; "that Congress might have then withdrawn the land from settlement or pre-emption and granted it directly to the State of Missouri or reserved it from sale for public purposes, and no vested right in Chartrand or his heirs, as against the United States, would have been invaded by its action; but, having allowed by its subsisting legislation the acquisition of a right of preference as against others to the

earliest settler or his heirs, the way was free to the prosecution of the claim of the heirs."

Hence it is that the court holds that when the title finally emanated from the Government it related back, as against third persons, not to the time of payment of the purchase-money and entry with the local land officers, but to the period of earliest settlement—a period when Chartrand was even denied the right to enter and had no title, legal or equitable, *as against the Government.*

The court makes the bare settlement the initiatory step, and then says:

"The party who takes this step, *if followed up to a patent,* is deemed to have acquired the better right as against others to the premises. The patent which is afterwards issued relates back to the date of the initiatory act and cuts off all intervening claimants."

If the patent of 1859 enured to Easton, as Hunot's legal representative, when issued it related back to the first necessary step taken by Easton in the acquisition of the title. The Supreme Court has specifically defined those necessary steps. The first was taken August 12, 1816, in the issue of the certificate. The second was taken when Brown located the certificate on the specific land subsequently conveyed by the patent. The third was taken when, on June 23, 1819, Brown returned his survey to the surveyor general, which survey segregated the soil from the public domain. Either of these acts is sufficient to support the doctrine of relation, as repeatedly construed by the Supreme Court, and vests in these defendants all that Easton or Hammond ever held or can hold in the disputed land.

In Washburn on Real Property, vol. 3, page 308, it is said:

"There are cases where the transaction is not complete and effectual in itself to convey title to lands, but by being connected with other acts or transactions, as parts of the one under consideration, it became effective by the relation

which the law creates between them, whereby they are made to partake of the character of a single and integral act. It may be difficult to classify these cases; but a reference to a few of them will give a general idea of what is here meant. One of these would be the case of a sale of premises made by a sheriff upon execution, but no deed delivered until a subsequent period, during which the judgment debtor had died. When a deed is given it has a relation back to the sale, and is considered as then taking effect, and its validity is not affected by the intermediate death of the debtor."

Washburn, in his Treatise on Real Property, referring to the case of Landes against Brant, says:

"The title in question was an imperfect one in the original claimant under the Spanish government, and a creditor of the one holding this title had seized his title on execution; and subsequently to this the United States confirmed the title to the original claimant. It was held that, by relation, he was the real owner when the sale was made, and, consequently, the purchaser under the sheriff's sale held the land against the devisees of the original claimant."

The only limitation placed by the courts upon the doctrine of relation is that it shall not work injustice to the rights of innocent third parties acquired between the events which it is proposed to unite by relation. It is, therefore, invariably held that a deed made in pursuance of a previous contract will, as between the parties, relate back to the date of the contract; but such relation will not be allowed to work injury to intermediate innocent purchasers or strangers who acquire an interest without notice. In other words, as between parties it is adopted for the advancement of justice, but is not permitted to work wrong to strangers.

Vancourt *v.* Moore, 26 Mo., 92.
Jackson *v.* Bard, 4 Johns., 230.
Fight *v.* Doe, 1 Blackf., 127.
Sampson *v.* Thornton, 3 Met., 275.
Wash. Real Prop., 3d vol., 308–'9.

In the case of Lessee of French and Wife *v.* Spencer (21 Howard, 228) Congress had passed an act, March 5, 1816, granting bounty lands to certain volunteers. Under this act a warrant was issued to one Silas Fosgit to locate 300 acres of land. This warrant was placed in the hands of an agent, who located it in Vigo county, Indiana, on June 3, 1816. No patent was issued for the land until the 26th of October, 1816. When issued the grant was made to said Silas Fosgit. On the 28th of June, 1816, after the location and before the issue of the patent, Fosgit conveyed the land to William H. Spencer, of New York.

The Supreme Court held that this land belonged to Spencer's heirs. The following language is found in the opinion of the court:

"Whether the patent related back in support of Spencer's deed is not a new question in this Court. It arose in the case of Landes *v.* Brant (10 How., 372), where it was held that a patent issued in 1845 to Clamorgan and his heirs, by which the heirs took the legal title, related back and enured to the protection of a title founded on a sheriff's sale of Clamorgan's equitable interest made in 1808. There, as here, the contest was between the grantee's heirs and the purchaser of the incipient title, the Court holding when the patent issued it related to the inception of the title and must be taken, as between the parties to the suit, to bear date with the commencement of the title. It is also the settled doctrine of this Court that an entry in a United States land office on which a patent issues (no matter how long after the entry is made) shall relate back to the entry and date with it (Ross *v.* Barland, 1 Pet., 655). The fiction of relation is that an intermediate *bona fide* alienee of the incipient interest may claim that the patent enures to his benefit by an *ex post facto* operation and receives the same protection at law that a court of equity could afford him."

In this case the incipient interest alluded to was the location of the original warrant on the tract of land in dispute, and this location consisted only of a notice to the register of the local land office that the holder of the warrant desired

to locate it on certain lands. It is certainly clear that the Government at any moment thereafter and before the issue of the patent had a right to cancel this location, and the holder of the warrant would have had no remedy whatever against the Government. But inasmuch as the Government proceeded thereafter to issue the patent, the patent, when issued, related back so as to enure to the benefit of any one who held a deed from the original holder of the warrant.

A, holding a bounty land certificate, gave B a bond to convey to him land that might be entered thereby and a power of attorney to locate and obtain a patent. A having died, B located the land in A's name and the patent was issued to A. Under a special statute of Arkansas, in which State the lands lay, the administrator of A conveyed the land to B, in compliance with A's bond. The heirs of B sold and conveyed the lands, after patent, to third parties. In a controversy between B and the alienees of the heirs, this Court said "that the special act of assembly which authorized the administrator to make a valid deed and divest the title of the heirs was decided in this case by the supreme court of Arkansas, and which decision, on the effect of the State law, is conclusive on this Court."

Maxwell *v.* Moore, 22 How., 185.

In the case of Ross *v.* Barland, *supra* (1 Peters), the court says:

"In the action of ejectment they (the courts) look beyond the grant and examine the progressive stages of the title, *from its incipient state, whether by warrant, survey, entry, or certificate*, until its final consummation by grant, and if found regular and according to law in these progressive stages the grant is held to relate back to the inception of the right and to have dignity accordingly."

In Touchard *v.* Crow, 20 Cal., 150 (Field, chief justice), it is said:

"At the time the deed was executed the claim of Ayerman and others to the land embraced in the grant to Padilla was pending before the land commission for confirmation. The decree of confirmation affirmed the validity of that grant and of the claim of petitioners. The patent following the confirmation took effect by relation at the date of the presentation of the petition to the land commission, on February 24, 1852. As the deed of the United States, it is to be regarded, so far as all intermediate conveyances are concerned, as having been executed at that time. (Citing 13 Cal., 478; 14 *id.*, 465; 15 *id.*, 361; 17 *id.*, 250; 18 *id.*, 570.) The deed to Stevens must therefore be held to have passed the interest acquired by the patent."

In State *v.* Barrett, 15 Cal., 361 (Field, chief justice), it is said:

"The patent is the last act of a series of proceedings taken for the recognition and confirmation of the patentee's right to the land it embraces, the first of which is the petition to the board of land commissioners. With reference to such proceedings, the patent takes effect by relation at the date of the first act; and so we have held in repeated instances. As the deed of the United States, it is to be regarded as if it had been executed at that time. * * * In the case at bar all the conveyances under which the plaintiff claims were executed previous to the issuance of the patent. They passed, therefore, only the right of the grantors under the grant. But the patent in recognizing the validity of the grant necessarily establishes the validity of all properly executed intermediate transfers of the grantee's interest."

The above doctrine has always been held by the supreme court of Missouri in similar cases.

Alexander *v.* Merry, 9 Mo., 510.
Page *v.* Hill, 11 Mo., 149.
Crowley *v.* Affalter, 49 Mo., 263.
Porter *v.* Mariner, 50 Mo., 364.
Papin *v.* Massey, 27 Mo., 445.
St. Louis *v.* Taney, 21 Mo., 243.
McCabe *v.* Worthington, 16 Mo., 514.

In Papin *v.* Massey, that court, speaking of the patent to Mackey or his legal representatives, says:

"It enured, then, to his legal representatives. These representatives may be his heirs or assigns. If he had conveyed the claim it would enure to his assignee. If there had been no conveyance the title would have passed to his heirs."

In Porter *v.* Mariner the Missouri court said:

"A sheriff's deed relates back to the sale as to the defendant in the execution and his privies and as to strangers purchasing with notice, and vests the title in the execution purchaser from that time."

In Callahan *v.* Davis, 90 Mo., 78, it is said: "It will be seen that Thompson conveyed the land to Turpin by a quitclaim deed after he had entered it and before he received the patent; and the contention is that this deed did not convey the after-acquired title, so that Turpin only got an equity, and that the plaintiff cannot maintain this suit at law on that title. Thompson, by his certificate of entry, got an imperfect title, one upon which, by the laws of this State, he could have maintained an action of ejectment for the land against any person not having a better title (R. S., 1855, § 2, p. 690). The patent when issued made that imperfect title a perfect legal one. The entry and the patent were all several acts necessary to make a complete title, and are to have relation back to the act which created the equitable title;" citing—

Landes *v.* Brant, 10 How. (U. S.), 372.
Touchard *v.* Crow, 20 Cal., 150–'60.
Crowley *v.* Wallace, 12 Mo., 143.
Landes *v.* Perkins, 12 Mo., 239 (same title as in Landes *v.* Brant).
Stark *v.* Bassett, 15 Cal., 361.
Porter *v.* Mariner, 50 Mo., 364.
Gibson *v.* Chouteau, 39 Mo., 538.

Fenn *v.* Holme, 21 How. (U. S.), 481.
Leach *v.* Koenig, 55 Mo., 451.
3 Washburn R. E., 276.
Winn *v.* Cole, Walker's Miss., 119.
Gibson *v.* Chouteau, 13 Wall., 98.
Ford *v.* French, 72 Mo., 250.

The case of Massey *v.* Papin, 24 Howard, 362, is as follows:

In 1806 one James Mackey presented his Spanish claim before the board of commissioners, and in 1809 the board rejected the claim. In 1814 Mackey gave a bond in the nature of a mortgage to a part of the land to Delassus. Papin became the assignee of the mortgage and foreclosed and purchased, taking his title by sheriff's deed. The plaintiffs were Mackey's heirs. The defendant was Papin. Congress confirmed the claim, by the act of 1836, to James Mackey or his legal representatives, and on these facts this Court said:

"An imperfect Spanish title, claimed by virtue of a concession, was by the laws of Missouri subject to sale and assignment, and, of course, subject to be mortgaged for a debt. The heirs of Mackey took the lands by descent, with the incumbrance attached, and held them in like manner that their ancestor held. The grant of the lands to the heirs by the act of 1836 carried the equities of the mortgagee, with the legal title, of which he took the benefit—a consequence contemplated by the mortgage itself; and if the assignment had been in its form a legal conveyance of the lands, the grantee would have taken a legal title; and to this effect are the cases of Bissel *v.* Penrose, 8 How., 317, and Landes *v.* Brant, 10 How., 348.

"Intermediate conveyances made by one who has taken incipient steps to procure title will be covered by the legal title when obtained, and will pass such title to the alienees against the grantee and his heirs and against his assigns with notice; and this doctrine equally applies, whether such

intermediate conveyances are made by act of the grantee himself or by the sheriff under execution."

Stoddard *v.* Chambers, 3 How., 316.
Bissell *v.* Penrose, 8 How., 317.
Taylor *v.* Brown, 5 Cr., 553.
Stark *v.* Starrs, 6 Wall., 418.
Shepley *v.* Cowan, 91 U. S., 337.

To the same effect see this case (Hammond *v.* Johnston), 93 Mo., 198.

"Where there are divers acts concurrent to make a conveyance, estate, or other thing the original act shall be preferred, and to this the other acts shall have relation."

Citing—

Viner's Abridgment Title Relation, p. 290.
Jackson *v.* McMichael, 3 Cowan, 75.
Crowley *v.* Wallace, 12 Mo., 145.

In Chouteau *v.* U. S., 9 Peters, 147, it is held that—

"Orders of survey made by the lieutenant governor of Upper Louisiana are the foundation of title and are capable of being perfected into complete titles; *that they are property capable of being alienated, and as such to be held as sacred and inviolable as other property.*"

The location of a warrant or order of survey or an entry with the register and receiver is an *actual* location, an incipient and necessary step in the acquisition of title. It becomes a *perfected* location when returned to and approved by the Commissioner of the General Land Office. It becomes a completed title only on the issue of the patent. An alienee of the locator, at any moment after the first act, takes the title under the patent.

It is persistently urged by the counsel for plaintiffs that because a sheriff's deed is a quitclaim of an existing title the subsequent issue of a patent for the same land will

not enure to the purchaser at the sheriff's sale. On some principle not familiar to me, and unknown, I apprehend, to the law, he insists that the legal title is an after-acquired or different title from that involved in the equities previously existing in the same transaction and upon which the legal title emanated. This identical argument was pressed upon the Supreme Court of the United States in Landes *v.* Brant, 10 How., 374. In that case the alienee of the equitable title claimed under a sheriff's deed, precisely as we do in this case. Counsel for Landes in that case insisted that as the conveyances in the preceding case of Stoddard *v.* Chambers were voluntary deeds, *inter partes*, a distinction should be drawn between it and the case at bar. The point was thoroughly examined by that court and answered in the following language:

"There was no covenant for title in either the assignment from Bell to Mackey or in that from Mackey to Stoddard, each being quitclaim assignments."

The court thereupon applied the doctrine of relation under the sheriff's deed and held that the patent issued in 1845 related back to the time of filing the claim, in 1805, before the commissioners; and, said the court, "on this assumption intermediate conveyances made by the confirmee or by the sheriff on his behalf, of a date after the first substantial act, are covered by the legal title and passed that title to the alienee."

Where a grantor expressly limits his conveyance to an existing right or interest in land it is unjust that a different and subsequently acquired title should pass. But in this case the title conveyed by the patent is the same title and the same land sold by the sheriff. There is no new or different title acquired. As this Court held in Van Rensselaer *v.* Kearney, 11 How., 294:

"A deed of this character (the first named) purports to convey and is understood to convey nothing more than the

interest or estate of which the grantor is seized or possessed at the time and does not operate to bind an interest *not then in existence.* The bargain between the parties proceeds upon this view, and the consideration is regulated in conformity with it."

But the Court proceeds:

"If the deed bears on its face evidence that the grantors intended to convey and the grantee expected to become invested with an estate of a particular description or quality, or that the bargain had proceeded upon that footing between the parties, then, although it may not contain any covenants of title in the technical sense of the term, still the legal operation and effect of the instrument will be as binding upon the grantor and those claiming under him, in respect to the estate thus described, as if a formal covenant to that effect had been inserted, at least so far as to estop them from ever afterwards denying that he was seized of the particular estate at the time of the conveyance."

Counsel totally failed to explain to the court how the legal title of survey No. 2500 ever became vested in Samuel Hammond without resort to the doctrine of relation. The confirmation of the land lying in New Madrid county was made by act of Congress April 29, 1816. That confirmation was not to Easton, but to Joseph Hunot. It was in lieu of a Spanish grant, given and confirmed to Hunot, that the Government consented to give and did give the land described in survey 2500, known as the New Madrid location. In order to support the proceeding leading up to the patent of 1859 it was necessary to show that those claiming under said patent owned certain lands which were injured by earthquakes in New Madrid county. It devolved upon the plaintiffs to show this fact. How do they show it? They first read a concession under the Spanish government to Joseph Hunot. They then read an application of Joseph Hunot, made January 31, 1811, to the board of commissioners to confirm this concession. They next read the report of Recorder Bates, dated November 1, 1815, recom-

mending this claim for confirmation to Joseph Hunot and not to Rufus Easton. They next read the act of confirmation, dated April 29, 1816, *made to Joseph Hunot and not to Rufus Easton.* They next read Recorder Bates' certificate, issued August 12, 1816, to Joseph Hunot or his legal representatives, reciting that the certificate was given in lieu of the lands injured by earthquakes in New Madrid county. They next presented the application made by Brown for Rufus Easton, June 16, 1818, to the surveyor general to locate the said certificate for the lands in dispute. They next present the survey returned by the deputy surveyor June 23, 1819, to the surveyor general's office, said survey being numbered 2500. They next show that this survey was returned to the recorder of land titles on January 8, 1833. It is then shown that on these proceedings a patent was issued by the Government on August 30, 1859, to Joseph Hunot or his legal representatives.

From this statement of the proceedings leading up to the patent it would appear that Joseph Hunot is the owner of the legal title of said survey. It is insisted, however, that the patent enures to the benefit of him who owned the injured land. But for the Spanish concession in New Madrid county there could have been no New Madrid location. Easton owned the New Madrid land when the exchange occurred, and is therefore owner of the located land. It will be observed that all these proceedings are dependent on each other, and they are all necessary to complete the title.

The court will observe that the two conveyances by the Government, the original concession and the New Madrid location, refer to Joseph Hunot as the original owner. If, therefore, the legal title, vested in Hunot by the patent of 1859, is made to enure to the benefit of Easton it must be effected by the doctrine of relation. In other words, the title conveyed by the patent to Hunot must relate back to 1810 in order to vest the legal title of the located land in Rufus Easton. Counsel has therefore adopted in this case a

species of relation that is accommodating. When the patent was issued, in 1859, he says in one breath the title related back only to 1833; in another he says it related back to 1810, so as to reach Hunot's deed to Vandenbenden. This is a species of relation which operates only for the benefit of the plaintiffs in error and always against the defendants.

For this extraordinary construction of the doctrine of relation counsel attempts to make the Supreme Court of the United States responsible. He refers to what is denominated as the "Hot Springs" cases (2 Otto, 698) and others of a similar character. And this brings me to the—

Law of New Madrid Locations.

In the Hot Springs cases nothing was decided nor intimated to sustain the position assumed by plaintiffs in the Missouri courts. Certain New Madrid certificates had been previously issued, and surveys thereof were made in 1820; but no returns of said surveys were made to the recorder's office. When these locations were made, in 1818, the Indian title to the land on which they were made had not been extinguished. The public surveys were not extended over the lands till 1838; nor was the sale of the lands at that time authorized by law. No New Madrid certificate could have been legally located on land the sale of which was not at the time authorized by law. Until surveyed, lands are never subject to sale or location. Before they ever came into market, to wit, April 20, 1832, Congress passed an act reserving from sale the Hot Springs and the surrounding lands to the United States. Under these circumstances the Supreme Court decided that the claimants were not entitled to the lands located under their New Madrid certificates. It is true that the court said in this case, as they have always said, that the land covered by the New Madrid locations was not segregated from the public domain and appropriated to the claimants as against the Government until the

return of the survey to the recorder of land titles, so as to prevent another appropriation of the same land by Congress. In that case there never had been a legal location of the certificates, and no appropriation could result. No title had vested in the claimants, because the claims were attempted to be located on land not surveyed nor subject to sale. The land was reserved for public uses before it ever became subject to sale; and in such cases the courts have invariably held that the location is void. But it is not said in this case, nor in *any* other case decided by this tribunal, that if patents in such cases had been issued the title would not have related back to the original issue of the New Madrid certificates as the incipient step necessary to procure the legal title. Indeed, in this identical case, the Supreme Court, in enumerating the steps necessary to obtain title under a New Madrid location, recites the following:

First. Application to the recorder asking a certificate of location.

Second. Issue of certificate by the recorder showing the amount of land to which the applicant is entitled.

Third. Application to the surveyor general presenting the certificate of location and describing the lands which the party desires to appropriate.

Fourth. Survey and plat by the deputy surveyor.

Fifth. Return of the survey and plat to the recorder of land titles to be filed and recorded, with a notice designating the tract located and the name of the claimant.

Sixth. Certificate of the recorder stating the facts and that the party is entiltedto a patent.

Seventh. Transmission of this certificate to the General Land Office.

Eighth. The patent.

Counsel refers also to the case of Lessieur *v.* Price (12 Howard, 59). In that case, as in the Hot Springs cases, each party claimed directly from the Government. It was a case where two titles had emanated from the Government, and the only controversy was which was the elder title. Lessieur claimed under a New Madrid location, the survey of which was returned to the recorder on February 11, 1822. The survey was not made by the deputy surveyor till August 5, 1821. Price claimed under the State of Missouri, it being a part of the land selected by the State under the act of March 6, 1820, granting four sections to that State for a capital.

On the 28th June, 1821, the State had fully completed the selection of four sections, and on that day required by law the governor to notify the surveyor general thereof, giving a full description of the lands selected, and on the 31st of December, 1821, the legislature completed the transaction by fixing the seat of government on the lands so selected and accepting them for that purpose.

Under these circumstances this Court said: "It follows that the legal title of the State of Missouri is older than the equitable title set up under Delisle's claim."

To the same effect is the case of Rector *v.* Ashley (6 Wall., 142). Rector claimed under a New Madrid location, of which no survey whatever had been returned to the surveyor general's office and the survey of which had not reached the recorder's office until June 16, 1838. Ashley claimed under the act of Congress approved June 23, 1836, granting to the State of Arkansas five sections of land to complete its public building at Little Rock. That State passed an act November 4, 1836, to sell the lands thus granted in June previous,

and on June 5, 1838, Ashley obtained the title sold by the State. The controversy, therefore, is between persons claiming separate and distinct titles, each claiming directly from the United States.

The learned judge who delivered the opinion in this case reviewed the case of Bagnell *v.* Broderick, 13 Pet., 436, in which it was said:

"The United States never deemed the land appropriated until the survey was returned to the recorder of land titles, for the reason that there were many titles and claims, perfect and incipient, emanating from the provisional governments of France and Spain and others from the United States in the land district where the New Madrid claims were subject to be located."

The court also quoted from the case of Barry *v.* Gamble, 3 How., 32, where it is said:

"Its (the survey's) return by the surveyor, with a notice of location, to the office of recorder was the first *appropriation* of the land."

The court then proceeds as follows:

"We are much pressed in the present case with the argument that the title here spoken of by the court is the *legal* and not the *equitable* title, and that, inasmuch as the applicant has done all that he can do to make good his claim to the land when he has deposited with the surveyor his certificate of loss, with a description of the land desired in exchange, he has thus acquired an equitable interest in the land so described *which the United States cannot divest by giving it to another.*

"But the rights of claimant are to be measured by the act of Congress and not exclusively by what he may or may not be able to do, and if a sound construction of that act shows that he acquires no *vested interest* in the land until the officers of the Government have surveyed the land and until that survey is filed in the office of the recorder and approved by him, then, as claimant's rights are created by that statute, they must be governed by its provisions, whether they

be hard or lenient. It seems to us clear from the foregoing cases that the court intended to decide that until this was done the claimant acquired no *vested right* to the land; no title, legal or equitable.

"It is evident that in the case of Lessieur *v.* Price the court is not speaking of the legal title. The statute of 1815 required a patent to be issued on the return of the survey to the recorder's office. The *strict legal title* remained in the United States until the patent issued, and the court could not have referred to that. On the contrary, it is obvious that the court was endeavoring to fix the point in the proceedings when the right of the claimant became *vested, when his equity became a fixed fact*, when the land he sought was *appropriated* to him, and when his injured land became the property of the United States, and by each of the three decisions we have cited this is held to be when the survey is returned to the office of the recorder of land titles. The *legal* title conveyed by the patent may not issue for years afterwards, but by the act of the legislature of Missouri an action of ejectment could be maintained on the equitable title thus acquired. In the Federal court, however, according to repeated decisions, this could not be done for want of the legal title."

In such cases the courts must determine which is the elder title. It was not necessary to decide nor did the court decide what is the incipient step in the acquisition of a New Madrid title to which other and subsequent acts will relate as between the locator and those claiming under him. The only question was the one propounded by the court itself: "What acts were necessary on the part of the locator *to divest the United States of title?*" When the court in this case said that Rector "acquired no vested right to the land, no title, legal or equitable," until the return of the survey to the recorder, it used the words only as applicable to the case before it. The court meant to say, as it has always said in such cases, that until such return of the survey the claimant holds "no title, legal or equitable," *as against the United States*—no such title as in equity would compel the United States to convey him the land, and no such title as would

prevent the Government from conveying it to another. In fact, in the very next paragraph the court expressly says: "On the contrary, it is obvious that the court (lower) was endeavoring to fix the point in the proceedings when the right of the claimant became vested—when his *equity* became a *fixed* fact."

In Mackey *v.* Easton (19 Wall., 619) Justice Field, delivering the opinion, said:

"The actual location of the New Madrid certificate issued to Smith was made and approved in 1818. * * * This *actual* location became a *perfected* location so as to appropriate the land on the return of the survey to the recorder in 1823."

In the case of Gibson *v.* Chouteau, 13 Wall., 92, Chouteau undertook to connect himself by conveyances with the original locator of the New Madrid certificate, These deeds purported to convey only the equitable interest, because the land was not patented until 1862. The supreme court of Missouri excluded the deeds for reasons not connected with the fact that they conveyed only an equitable interest. When the case came into this Court it was held "the rulings of the State court upon these grounds are not open to review in this Court, as they involve no questions of Federal jurisdiction."

Chouteau, failing to establish conveyances of the equitable title, set up the statute of limitations, which he claimed barred the legal title because of ten years' adverse possession prior to the issue of the patent. The supreme court of Missouri so decided. In answer to this claim this Court, in its opinion delivered by Justice Field, used the following language:

"The error of the learned court consisted in overlooking the fact that the doctrine of relation is a fiction of law adopted by the courts solely for the purposes of justice and is only applied for the security and protection of persons

who stand in some privity with the party that initiated proceedings for the land and acquired the equitable claim or right to the title.

"The defendants in this case were strangers to that party and to his equitable claim, or equitable title, as it is termed, *not connecting themselves with it by any valid transfer from the original or any subsequent holder.* The statute of limitations of Missouri did not operate to convey that claim or equitable title to them. It only extinguished the right to maintain the action of ejectment founded thereon under the practice of the State. It left the right of entry upon the legal title subsequently acquired by the patent wholly unaffected."

The learned judge, it is true, in discussing the doctrine of relation used the following language:

"Thus, in the present case the patent which was issued in 1862 is said to take effect by relation at the time when the survey and plat of the location, made in 1818, were returned to the recorder of land titles under the act of Congress. At that time the title of the claimant to land desired by him had its inception, and, so far as it is necessary to protect his rights to the land and the rights of parties deriving their interest from him, the patent is held to take effect by relation as of that date."

It will be observed that it was wholly immaterial to the decision in this case at what period the equitable title may have begun. All that is said upon that subject is wholly unnecessary to the determination of the cause.

It is not intimated that an equitable title in the claimant did not exist prior to the return of the survey to the recorder of land titles. The title evidently alluded to by the court is what the same judge referred to in other cases as a "vested" or "complete" title.

In the case of Easton *v.* Salisbury, 21 How., 426, the controversy was between a Spanish concession to Mordecai Bell and the location of Easton under a New Madrid certificate

to one Smith. The Spanish grant prevailed *quoad* the land included therein.

The case of Mackey *v.* Easton, 19 Wall., 619, came to this Court by writ of error to the United States circuit court at St. Louis, and no question as to jurisdiction arose. The controversy was, which party held the deed of the James Smith to whom the certificate was issued. Counsel for Mackey insisted that Easton's title had been held bad in the former case, and that contention brought up for re-examination the Salisbury case, and what is said in respect of the return of the survey to the recorder is applicable alone to the Salisbury and not to the Mackey case. The language of the opinion is in strict accordance with all the opinions of this Court on that subject. It was delivered by Justice Field, whose numerous opinions in this Court and in the supreme court of California show a perfect knowledge of the whole subject.

It is said that there could be "no *effectual* appropriation of the land located under a New Madrid certificate until the survey was returned to the recorder of land titles;" that until that was done "there was no official recognition of the proceedings taken by the claimant *which bound the Government.*"

These opinions are in strict accordance with others in reference to pre-emptions. In Frisbie *v.* Whitney, 9 Wall., 187, it is said:

"A party by settlement upon lands of the United States with a declared intention to obtain a title to the same under the pre-emption laws does not thereby acquire such a *vested interest* in the premises as to deprive Congress of the power to make other disposition of them."

In the Yosemite cases, 15 Wall., 77, it is said that mere settlement on the public lands according to law creates no obligation on the Government to convey the land pre-empted; but "when the pre-emptor has complied with *all*

preliminary requirements and paid for the land he for the first time acquires a *vested* interest in the premises, of which he cannot be deprived."

Wirth *v.* Branson, 98 U. S., 118.

"He is then entitled to a certificate of entry from the local land officer and ultimately to a patent for the lands from the United States."

The Yosemite case, 15 Wall., 77.

Until such payment and entry the pre-emption laws give to the settler a privilege, only in case the lands are offered for sale, of purchasing them in preference to others. (*Idem.*)

And it is this privilege alone which in the case of Shepley *v.* Cowan, 91 U. S., 330, this Court said constituted the *incipient step* in the acquisition of title. The Court said:

"Thus the patent upon a State selection takes effect as of the time when the selection is made and reported to the land office, and the patent upon a pre-emption settlement takes effect from the time of the settlement as disclosed in the declaratory statement or proofs of the settler to the register of the local land office."

In the opinion of Justice Field for the Court in this case (Shepley *v.* Cowan) is to be found tersely expressed the whole law of the case at bar:

"In these cases [alluding to Frisbie *v.* Whitney, 9 Wall., and the Yosemite case, 15 Wall.] the Court only decided that a party by mere settlement upon the public lands, with intention to obtain a patent under the pre-emption laws, did not thereby acquire such a vested interest in the premises as to deprive Congress of the power to dispose of the property; that, notwithstanding the settlement, Congress could reserve the lands from sale whenever they might be needed for public purposes, as for arsenals, fortifications, light-houses, hospitals, &c.; that the settlement, even when accompanied with an improvement of the property, did not confer upon the settler any right in the land as against the United States or impair in any respect the power of Con-

gress to dispose of the land, &c.; but whilst, according to these decisions, no vested right as against the United States is acquired until all the prerequisites for the acquisition of the title have been complied with, parties may as against each other acquire a right to be preferred in the purchase or other acquisition of the land when the United States have determined to sell or donate the property."

Plaintiffs insist that a New Madrid survey is to be exempted from the usual doctrine of relation. Why so? The inception of a New Madrid grant is a "certificate" by a Government officer. The second act is the "survey" of the location by the surveyor general. And this Court expressly held in the case of Ross *v.* Borland, above cited, that the doctrine applies to *all* cases of title, "whether by warrant, *survey*, entry, or *certificate*."

If an order of survey by the lieutenant governor of Upper Louisiana is "property capable of being alienated, and as such to be held as sacred and inviolable as other property," and if it was "capable of being perfected into a complete title," as announced by this Court, why shall an order of survey made and executed by a Government officer, by authority of a certificate made by another officer, and both under an act of Congress, be less sacred and inviolable as property or as a foundation of title?

J. B. HENDERSON,
For Defendant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 937.

DAVID L. HAMMOND AND OTHERS, PLAINTIFFS IN ERROR,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO.

Defendants move the Court to dismiss the writ of error in this case or to affirm the judgment of the supreme court of Missouri for the reasons following:

FIRST.

In the judgment of said State court no Federal question was involved or decided against the plaintiffs.

The suit was an action of ejection brought by plaintiffs in error, in which was tried the question of title to land.

The evidence showed, and each party admitted, that the United States had parted with its title to the land in controversy long prior to the institution of the suit.